DIGEST OF THE LAW OF PROBATE DUTY

BY

A. F. LEACH.

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DIGEST OF THE LAW OF PROBATE DUTY.

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DIGEST OF THE LAW

RELATING TO PROBATE DUTY.

BY

ARTHUR F. LEACH,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW
AND FELLOW OF ALL SOULS COLLEGE, OXFORD.

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PREFACE.

The law relating to Probate Duty is a typical example of the confusion characteristic of English law in general, without having the same long history to account for, even if not to some extent to justify, such confusion. The creation wholly of modern statutes, there is no reason at all why a subject so limited in extent, and in its nature simple and eminently capable of exact definition, should have been involved in such confusion—a confusion the more intolerable because, being a revenue law, it as much, if not more than criminal law, demands accuracy and conciseness of statement. It is, nevertheless, impossible to conceive a subject so slight and simple plunged into a more hopeless state of muddle.

The foundation of the law is laid in the Stamp Act, 55 Geo. 3, c. 184, passed on July 11, 1815, which repealed nearly all previous Stamp Acts, and placed the Stamp Duties on a wider and more

permanent basis. The whole of that Act, except the part relating to Probate Duty and the third schedule, specifying the rates of Legacy and Succession Duty, is now repealed. It might have been expected that the remaining part also would have been repealed and re-enacted, or at least, that any alterations or additions to it would have been grafted into it and made one whole. But no one acquainted with the haphazard process of English law-making would anticipate any such rational procedure. He would expect (and his expectation would not be disappointed) to find the original law explained, changed, added to by other statutes and bits of statutes dealing with this subject, not alone but in common with many other subjects, while it had been extended, or contracted, or altogether changed in its application by judicial decisions, which had in their turn been converted from "judge-made" into substantive law by declaratory or overruling statutes; and he would further expect to find even the first principles and leading propositions of the subject confused and rendered uncertain, or refined away altogether, by a multitude of judicial decisions, distinguished from each other by hairbreadth distinctions which would never have been dreamed of, except by way of avoiding the authority of cases which the judges did not wish to follow, but either could not or would not expressly overrule.

The consequence of this process is that the law

relating to Probate Duty is to be found scattered in some five-and-twenty statutes, or bits of statutes, and some dozens of decided cases; so that to obtain a clear idea of the law and the liabilities imposed by it requires much time and toil, whereas it might be done in ten minutes.

Luckily, Mr. Hanson's book comes to the rescue of the inquirer, and will save him a great deal of labour. But the plan of that book being a commentary on the original Act makes it less handy than it might be; and even with that aid, such is the uncertainty of the law, that it is difficult to really arrive at any clear unhesitating general rule as to what property is subject to the duty and what not. There seems, therefore, to be room for a book which shall contain a conciser statement of the law, and take a step on the way to the sore-needed digest of the revenue laws, while at the same time being a handy guide in practice. To be such a book is the aim of this work. In carrying it out, the obligations under which the author lies to Mr. Hanson's book must be sufficiently obvious, and he has not therefore thought it necessary to acknowledge those obligations in detail. And while acknowledging once for all his indebtedness to the book, he also wishes to acknowledge his indebtedness to Mr. Hanson himself for his kind assistance and criticisms.

The form of the book is due to the author's conviction of the utility and necessity of a digest

of the law in general, while the importance of a clear and exact statement of fiscal laws, and the real compactness and distinctness of the subject, seem to require and suggest that form for Probate Duty law in particular; and the same considerations make the subject an excellent one for an attempt at a digest by a "'prentice hand." For such a digest, the form adopted in Sir J. Fitzjames Stephen's Digests of the Criminal Law and the Law of Evidence from the Indian codifying Acts seems to be by far the most suitable, and indeed the only adequate one yet devised. The illustrations, which are its distinctive characteristic, clothe the dry bones of the law in the flesh and blood, without which, Law is a somewhat unprofitable if not revolting study. The use of these illustrations may also furnish a ready answer to one of the chief objections to any attempt at codifying the law. It is always said, that directly you have your code the old process will begin over again. A host of decisions will immediately and necessarily be made, expounding, extending, modifying, changing the law. Bulky commentaries will be poured forth without number, without which the code would be unintelligible and useless, and these again will alter and complicate the law. Besides which, the patchwork of statutes will begin to be woven anew, and in the end the bulk and confusion of the law will be increased, and the last state thereof will be worse than the first. A great part of these objections, it is true, apply

in full force to only a badly-drawn code, yet it must be admitted that in part they apply to all codes. But they would apply with less force to a code which contained illustrations. In the first place, very much less explanation would be needed, whether by way of commentary, judicial decision, or statute ; for, as in most subjects to illustrate is to explain, so especially is it in law, and an authoritative illustration would be an authoritative explanation, so that the law would carry its own application. Still, in many points the law would remain doubtful. It is impossible to anticipate all cases. Circumstances must often arise in which a conflict of principles will occur, which no formulated statement of the law has provided for, and which must be left to the hazard of judicial decision. Yet everyone will admit that this "judge-made" law should be rendered, if possible, as certain, ascertainable, and concise as any other part of the law, and should be either embodied in the substantive law or expressly overruled. As the case stands at present, an overworked Legislature cannot find either time or inclination to do this. Yet it is neither to be hoped for nor wished that Parliament should part with its legislative authority to any other body, however skilled or trustworthy. The only way is to set some self-acting machinery in motion, which shall perform the task with legislative authority, though without direct legislative interference. This, it is suggested, might be done by enabling some

skilled and trusted body, such as the Council of Law Reporting, to digest the decided cases and, from time to time, embody them in the illustrations, so as to form a part of the substantive code; and such illustrations should be considered as binding, and as dispensing with the necessity of going behind them. Such of these cases as really effected a substantial alteration in the law, and were not merely explanatory, might be embodied in the abstract statement as riders, after the form adopted by Mr. Pollock, in his Digest of the Law of Partnership, in what he calls "explanations," though a more colourless word, such as "rider," might perhaps be better. It might also be necessary to entrust the Council with the duty of drawing up, from time to time, a short Act, containing any proposed amendments of any parts of the law, to be submitted to Parliament, and to insert in their proper places in the code, or strike out, as the case might be, such provisions as Parliament decreed. By some such method as this, the law might be for ever preserved in a compact and clear form, and at the same time be continually adapted to the changing needs of society, eliminating what was antiquated and inserting what was new, without producing confusion or complication.

Meanwhile, this attempt at a digest is put forward in the hopes of its proving of practical use, while at the same time it is offered as a mite of

contribution to the great work of digesting and codifying the law of England, which can at present only be done by private persons helping here a little and there a little. Little as this is, yet it must be remembered "*ex atomis mundus.*"

COMMERCE COURT,
LORD STREET, LIVERPOOL.

CONTENTS.

PAGE

DIGEST 1–38

Section 1. Probate duty defined 1

„ 2. Mode of levying duty 1

„ 3, 4. Persons liable for the duty 2

„ 5, 6. Penalties for non-payment 5

„ 7, 8. Mode of ascertaining amount of duty ... 7

„ 9. How rectification of mistakes in amount of duty may be made 13

„ 10. In what cases credit given for duty ... 17

„ 11. Subject of the duty 18

„ 12. When duty returnable in respect of debts 28

„ 13. Exemptions from duty 32

Schedule of rates at which duty is payable ... 35

APPENDIX A. 39–55

Note 1. On the definition of the subject of the duty 39

Note 2. In what cases debts due to deceased are liable to duty 44

Note 3. In what cases partnership property is liable to duty 49

APPENDIX B.

Statutory provisions relating to probate duty ... 56–129

LIST OF CASES CITED.

Adv.-Gen. *v.* Thomson, 23
—— Lord *v.* Hagart, 30
—— —— Moir's Trustees *v.*, 30
Att.-Gen. *v.* Bowens, 24
—— *v.* Brunning, 19, 20, 39, 40, 42, 44, 46
—— *v.* Dimond, 24, 40
—— *v.* Higgins, 26
—— *v.* Hope, 24, 40, 45, 46
—— *v.* Jones, 21
—— *v.* Partington, 19, 35 n.
—— *v.* Pratt, 23

Barber, Buckley *v.*, 24, 49
Bedwell, Townley *v.*, 20, 41, 42
Bell, in the Goods of, 35 n.
Bennett, Lawes *v.*, 20, 41, 42, 43
Berchtoldt, Chatfield *v.*, 22, 39
Bligh *v.* Brent, 25
Bowens, Att.-Gen. *v.*, 24
Bradshaw, Custance *v.*, 21, 40, 43, 44, 50
Brent, Bligh *v.*, 25
Brunning, Att.-Gen. *v.*, 19, 20, 39, 40, 42, 44, 46
Buckley *v.* Barber, 24, 49

Carr *v.* Roberts, 7
Carron Iron Company *v.* Maclean, 26
Chatfield *v.* Berchtoldt, 22, 39
Christian *v.* Devereux, 7
Colvin, Lord *v.*, 19, 20, 41, 44
Commissioners of Stamps, R. *v.*
Ostell's case, 31, 32
Wallace's case, 32
Cooke *v.* Gregson, 39
Custance *v.* Bradshaw, 21, 40, 43, 44, 50

Devereux, Christian *v.*, 7
Dimond, Att.-Gen. *v.*, 24, 40
Doe *d.* Richard *v.* Evans, 19

Edwards *v.* Hall, 25
Emuss *v.* Smith, 43
Evans, Doe *d.* Richard *v.*, 19

Fernandez Executors' case, 26
Forbes *v.* Steven, 21, 44

General Company for the Promotion of Land Credit, In re, 26
Gregson, Cooke *v.*, 39

Hagart, Lord Advocate *v.*, 30
Hall, Edwards *v.*, 25
Hayter *v.* Tucker, 25
Higgins, Att.-Gen. *v.*, 26
Hope, Att.-Gen. *v.*, 24, 40, 45, 46
Howell *v.* Jones, 7
Hunt *v.* Stevens, 7, 23

In the Goods of Urruela, 8

Jarvis *v.* Wolferston, 29
Jones, Att.-Gen. *v.*, 21
Jones *v.* Howell, 7

Lawes *v.* Bennett, 20, 41, 42, 43
Linley *v.* Taylor, 25
Lord *v.* Colvin, 19, 20, 41, 44

Lord Advocate *v.* Hagart, 30

Maclean, Carron Iron Company *v.*, 26
Matson *v.* Swift, 20, 40, 42, 43, 44
Moir's Trustees, Lord Adv. *v.*, 30

Ostell's case, 31

Partington, Att.-Gen. *v.*, 19, 35 n.
Percival's Executors *v.* The Queen, 31
Perry's Executors *v.* The Queen, 19
Pratt, Att.-Gen. *v.*, 23

Queen, Executors of Percival *v.*, 31
Queen, Executors of Perry *v.*, 19

R. *v.* Commissioners of Stamps Ostell's case, 31, 32
Wallace's case, 32

Steven, Forbes *v.*, 21, 44
Stevens, Hunt *v.*, 7, 23
Swift, Matson *v.*, 20, 40, 42, 43, 44

Taylor, Linley *v.*, 25
Taylor, Re, 30
Thomson *v.* Adv.-Gen., 23
Townley *v.* Bedwell, 20, 41, 42
Tucker, Hayter *v.*, 25

Urruela, In the Goods of, 8

Wallace's case, 32
Wolferston, Jarvis *v.*, 29

LIST OF

STATUTES RELATING TO PROBATE DUTY,

SET OUT IN APPENDIX B.

PAGE

39 & 40 Geo. 3, c. 72, s. 16.
Return of duty paid twice over 64
41 Geo. 3, c. 86, s. 3.
Double grant of probate exempted from duty 65
48 Geo. 3, c. 149, ss. 35–44.
Exempting trust estates and Inventory Duty Act ... 66–72
55 Geo. 3, c. 184, ss. 2, 37–53.
Probate Duty Act 56–64
5 & 6 Vict. c. 79, s. 23.
Power of extending time for return of duty given to Commissioners of Stamps 73
16 & 17 Vict. c. 59, s. 8.
Additional inventories charged with additional duty only 74
21 & 22 Vict. c. 56, ss. 9, 12–17.
Grants of probate, &c., to extend over the United Kingdom 75
22 & 23 Vict. c. 36, s. 1.
Extending graduated scale of duty 78
23 Vict. c. 5, s. 1.
Indian Government securities made liable to duty... ... 79
23 Vict. c. 15, ss. 4–6.
Property appointed under power and heritable securities in Scotland made liable to duty 80
23 & 24 Vict. c. 80, ss. 1–9.
Mode of collecting duty on heritable securities in Scotland 81
24 & 25 Vict. c. 92, s. 3.
Duty not returnable in respect of voluntary debts... ... 86
25 & 26 Vict. c. 22, s. 39.
Debts owing on specialty in United Kingdom assimilated to simple contract debts 86

PAGE

26 & 27 Vict. c. 57, ss. 5, 15.
Exemption under Regimental Debts Act 87
27 & 28 Vict. c. 36, ss. 2, 3.
Exemption under Army Prize (Property of Deceased) Act 87
27 & 28 Vict. c. 56, ss. 4, 5.
British ships declared liable to duty... 88
28 & 29 Vict. c. 104, Part V. ss. 57–64.
Duty to be recovered by proceedings in Exchequer ... 89
28 & 29 Vict. c. 111, ss. 3–6, 15.
Exemption under Navy and Marine (Property of Deceased) Act 92
31 & 32 Vict. c. 90, ss. 1, 2.
Exemption of civil and military pay allowances in certain cases 92
31 & 32 Vict. c. 124, ss. 7, 8.
Exemption of mortgage debts on leaseholds 93
33 & 34 Vict. c. 97, s. 15.
Conditions on which deeds may be stamped after execution 96
38 & 39 Vict. c. 60, s. 15.
Exemption under Friendly Societies Act, 1875 96
39 & 40 Vict. c. 70, ss. 41–3.
Amending and extending ss. 12 and 13 of 21 & 22 Vict. c. 56 97
40 & 41 Vict. c. 13, s. 12.
Substituting Controller of Legacy and Succession Duties for Solicitor of Inland Revenue in Edinburgh... ... 99

DIGEST OF THE LAW

RELATING TO PROBATE DUTY.

I.—Probate duty is the stamp duty payable for or in respect of grants of probate of wills or letters of administration with the will annexed of any person deceased who has left a will, or of grants of letters of administration of the estate and effects of intestates, or for or in respect of inventories to be exhibited and recorded in a commissary court in Scotland of the estate and effects of any person deceased, or for or in respect of the substance on which such grants or inventories are written. Probate duty defined.

II.—Probate duty is levied and charged by the Commissioners of Inland Revenue throughout the United Kingdom of Great Britain and Ireland for the use of the Queen, her heirs and successors, subject to the general regulations of the Stamp Act, 1870, and the special provisions hereinafter contained, at the rates specified in the schedule[1] hereto annexed. How levied.

[1] See p. 35.

III.—(*a*) Generally :

Persons liable to pay Probate duty.

[1] In England and Ireland : Everyone who takes possession of or in any manner administers any part of the personal estate and effects, situate in the United Kingdom, of any person deceased who died domiciled [2]elsewhere than in Scotland, must take out probate of the will or letters of administration of the estate and effects of such person in England or Ireland, as the case may be, according to the situation of the estate and effects, and is personally liable for the probate duty payable in respect of the value of such estate and effects. In Ireland such duty is a debt due to her Majesty, her heirs and successors.

[3] In Scotland : Everyone who intromits with or enters upon the possession or management of any personal or movable estate and effects, situate in the United Kingdom, of any person who died domiciled in Scotland, or of any personal or movable estate and effects, situate in Scotland, of any person who died domiciled abroad, must exhibit, as hereinafter mentioned, an inventory of all the personal or movable estate and effects of the deceased, and is personally liable for the probate duty payable in respect of the value of such estate and effects as for a debt due to her Majesty, her heirs and successors.

(*b*) Special provisions :

[1] Probate Duty Act, s. 37 ; Ir. 5 & 6 Vict. c. 82, s. 35 ; 56 Geo. 3, c. 56, s. 32.
[2] 21 & 22 Vict. c. 56, s. 9.
[3] Inventory Duty Act, s. 38 ; 23 & 24 Vict. c. 80, s. 5.

[4] In the case of personal or movable estate or effects which have been appointed by the deceased by will, under any authority enabling him to dispose of such estate or effects as he thinks fit, such estate or effects for purposes of the duty form part of the general estate and effects of the deceased, and the person administering such general estate and effects must take out administration thereto and is liable for duty accordingly, but the duty is also a special charge on the property so appointed by will, and must be paid thereout by the owner or trustee thereof to the general administrator.

[5] In the case of money secured on heritable property in Scotland, or by Scottish bonds or other instruments, which or the rights to which are taken, excluding executors, everyone who takes such money, whether as having a beneficial interest, or as trustee, or in any other capacity, and whether having an absolute or only a limited right therein, and whether taking by *mortis causâ* conveyance, or special destination, or by inheritance, unless the money so secured is included by the executor or executors of the deceased in the general inventory of the deceased's movable or personal estate, must exhibit a special and separate inventory thereof, and is liable for the inventory duty payable on such money as for a debt due to her Majesty, her heirs and successors, together with interest thereon at five per cent. from the expiry

[4] 23 Vict. c. 51, ss. 4, 5.

[5] 23 & 24 Vict. c. 80, ss. 1–4.

of the time within which the duty is properly payable thereon, in accordance with the provisions hereinafter contained. In either case the burden of the duty on money so secured must, in the absence of any special agreement, or provision, or testamentary direction to the contrary, be ultimately borne by the persons beneficially interested therein proportionately to their interests.

Provisions for insuring probate, &c., being taken out.

IV.—[1] In England and Ireland: Probate or letters of administration must be taken out in the proper Registry of the Probate Division of the High Court by the person administering the estate of any deceased person, as in the last section mentioned, within six months of the death of the testator or intestate; or within two months after the termination of any dispute or suit respecting the will or the right to letters of administration, if there is any such suit or dispute that is not ended within four months after the death.

[2] In Scotland: An inventory of the estate and effects of the deceased person must be exhibited in the proper Commissary Court of Scotland by anyone intromitting with the estate and effects of any deceased person, as in the last section mentioned, on or before disposing of or distributing any part of such estate or effects, or uplifting any debt due to the deceased, and at all events within six calendar months next after having so intromitted.

[1] Probate Duty Act, s. 37; Ir. 5 & 6 Vict. c. 82, s. 35.
[2] Inventory Duty Act, s. 38.

[3]A separate inventory, to be called a special inventory, of all money secured on heritable property in Scotland, and of all money secured by Scottish bonds or other instruments, which or the rights to which are taken, excluding executors, constituting the succession or part of the succession of anyone deceased, must be lodged with the Controller of Legacy and Succession Duties at Edinburgh within six months after taking the same, or any part thereof, or any interest due thereon. But the executor or executors of the deceased may add the amount of money so secured and the value thereof, including the proceeds accrued thereon, to the inventory in Scotland of the deceased's movable or personal estate, in which case no special inventory is required from the person or persons taking the same.

Penalties.

V.—[1]In England and Ireland: Everyone failing to comply with the provisions of the two last preceding sections is liable to forfeit 100*l.*, and a further sum at the rate of ten per cent. on the amount of duty payable; which penalty is a personal penalty, recoverable as such [2]by proceedings in the Exchequer Division of the High Court of Justice, or, in Ireland, by proceedings in the Court of Exchequer, [3]at any time within two years after the liability is incurred.

[3] 23 & 24 Vict. c. 80, ss. 1, 2; Ir. 5 & 6 Vict. c. 82, s. 35.
[1] Probate Duty Act, s. 37. [2] 31 El. c. 5, s. 5.
[3] 11 & 12 Vict. c. 43, s. 36; 22 & 23 Vict. c. 21.

[4] In England: In England, the Commissioners of Inland Revenue may, on default made in payment of the duty, sue out of the Exchequer Division of the High Court of Justice a writ of summons, commanding the person in default to deliver to the Commissioners an account of the estate of the deceased and of its value, and to pay such duty as would have been payable if probate or administration had been obtained, and the costs of the proceedings, or to show cause to the contrary; and on cause being shown, such order shall be made as seems just, and any such proceedings shall be a waiver of all penalties incurred in the premises by such person as aforesaid.

[5] In Scotland: Anyone failing to comply with the provisions of the two last preceding sections is liable to forfeit the sum of 20*l.*, to be recovered by ordinary action or summary complaint in the Sheriff, Stewart, or Borough Court, or before any justice of the peace of the shire, stewartry, or borough, where the person or persons sued or complained of resides, which court of justice may, if there appear cause, mitigate the penalty, so that the same be not reduced below 10*l.*, besides costs of suit; and every such person is also liable to the payment of double the amount of duty payable on the inventory neglected to be exhibited. Such double duty is a debt to her Majesty, her heirs and

[4] 28 & 29 Vict. c. 164, s. 57.
[5] Inventory Duty Act, s. 38.

successors, from the person liable for the same, and is recoverable accordingly.

Probate, &c., insufficiently stamped, not available in evidence.

VI.—In England and Ireland: No personal estate or effects subject to probate duty can be recovered in the courts of England or Ireland unless a grant of probate or letters of administration, stamped to the proper amount, sufficient to include the property sought to be recovered or dealt with, has been previously obtained and is produced in evidence of title, and no such grant improperly stamped is admissible in evidence.

ILLUSTRATIONS.

(i) [1] A takes out representation to B, and pays duty for a value not exceeding 1,000*l.*; he sues C to recover property valued at 1,300*l.* He has no title, and cannot recover.

(ii) [2] A takes out administration to B, limited to purposes of suit, for value not exceeding 50*l.* The amount sought to be recovered for administration is 16,000*l.* In equity, as well as at law, the grant is not admissible, and property cannot be recovered.

(iii) [3] A, administrator of B, presents a petition for stop order on fund in court; such order refused on grant insufficiently stamped.

Mode of ascertaining amount of duty.

VII.—[1] In England and Ireland: On or before applying for probate or letters of administration, the intended applicant or applicants must either

[1] Stamp Act, 1870.

[2] *Hunt* v. *Stevens*, 3 Taunt. 113; *Carr* v. *Roberts*, 5 B. & A. 905; *Jones* v. *Howells*, 2 Hare, 342.

[3] *Christian* v. *Devereux*, 12 Sim. 164.

[1] Probate Duty Act, s. 38; Ir. 56 Geo. 3, c. 56, ss. 117, 118.

personally make, [2]or cause to be made by some competent person, an affidavit before the surrogate or other person, who, in granting probate or letters of administration, administers the usual oath for the due administration of the estate and effects of the deceased, stating that the whole estate and effects of the deceased for or in respect of which the probate or letters of administration is or are to be granted, exclusive of what the deceased was possessed of or entitled to as a trustee for any other person or persons, and not beneficially, are under the value of a certain sum, to be therein specified to the best of the deponent's knowledge, information, or belief.

Such affidavit must be in the form [3]annexed hereto, [4]and is free of stamp duty, and must be sent by the registrar or other proper officer, together with a copy of the will or a copy or extract of the letters of administration, to the Commissioners of Inland Revenue, within such time as the judge of the court may from time to time direct, under a penalty of 50*l*. No court or officer of any court may grant probate or letters of administration without first requiring and receiving such affidavit from the person or persons applying for such grant. Any officer failing so to do is liable,

[2] *I.e.*, he need not make the affidavit himself. An agent may do it: *In the Goods of Urruela*, L. R. 1 P. & D. 598.

[3] See App. B, p. 98 *et seq.* Unless otherwise specified, affidavit includes solemn affirmation or declaration.

[4] Probate Duty Act, s. 39; Ir. 56 Geo. 3, c. 56, ss. 47, 48.

in England, to a penalty of 5*l.* and loss of office; in Ireland, to a penalty of 50*l.* and loss of office.

[5] In Scotland: Everyone exhibiting an inventory must do so upon oath, to be made before a Judge of or Commissioner appointed by the proper Commissary Court of Scotland. The inventory must include all the personal or movable estate and effects of the deceased already recovered or known to be existing, distinguishing what is situate in Scotland and what elsewhere, together with any testament or other writing relating to the disposal of such estate or effects or any part thereof, which the person or persons exhibiting such inventory have in his, her, or their custody or power. [6] Such inventory may also include money secured on heritable property in Scotland or by Scotch bonds or other instruments, excluding executors; but if such inventory does not include money so secured, a separate inventory, to be called a special inventory, must be exhibited upon oath before a magistrate or justice of the peace, within the United Kingdom, or a British consul. Such inventories, together with such testament or other writings, are to be recorded in the books of the Commissary Court and retained by the clerks of such court; and from time to time such inventory, together with the oath relating

[5] Inventory Duty Act, ss. 39, 40.
[6] 23 & 24 Vict. c. 15, ss. 1–4.

thereto, are to be sent to the Controller of Legacy and Succession Duties at Edinburgh.

Any clerk who receives and records any inventory not duly stamped, or who fails to record, retain, or transmit, as aforesaid, any inventory duly stamped, is liable to a penalty of 50*l.* for every such offence.

Rule where deceased leaves property in more than one of the three kingdoms.

VIII.—[1] When a deceased person leaves property situate in more than one of the three kingdoms of England, Scotland, and Ireland,

1. When deceased dies domiciled abroad :

Probate, or administration, or inventory duty, as the case may be, must be paid in each kingdom in respect of the property situate therein.

2. When deceased dies domiciled in the United Kingdom :

(*a*) [1] When deceased was possessed of property both in England and Ireland, but not in Scotland, a grant of probate or letters of administration may be obtained in either country and resealed in the other, but

(i) If the affidavit of value of the estate made on applying for probate and the amount of duty paid only include the property in the country in which probate is applied for, then the grant of probate will be resealed in the other country only after a further affidavit has been made of the value of the property in that country, and payment of additional duty will be required as under Section VI.,

[1] 20 & 21 Vict. c. 79, ss. 94, 95 (Court of Probate Act).

sufficient to make the total duty paid include the aggregate value of the property in both countries.

(ii) If the affidavit of value of the estate made on applying for probate and the amount of duty paid include the aggregate value of the property situate in both countries, then the grant of probate may be resealed in the other country without further payment of duty on production at the principal registry of the Probate Court of the original grant, together with a certificate from the Commissioners of Inland Revenue that the full and proper stamp duty has been paid on the aggregate property in both countries.

(*b*) [2] When the deceased dies possessed of property situate in Scotland as well as in England or Ireland or both :

The grant of probate or letters of administration or confirmation of executor must, in the first instance, be obtained in the kingdom in which the deceased died domiciled. For this purpose the domicile of the deceased is to be determined by a declaration thereof in the affidavit of value. Such declaration shall be sufficient warrant for the proper officer of the Probate or Commissary Court to write and sign a note or memorandum of such domicile on the grant of representation. Such grant when obtained,[3] subject to the conditions

[2] 21 & 22 Vict. c. 56; 39 & 40 Vict. c. 70, ss. 41–43.

[3] See next page. The Act is permissive, not compulsory, and if not taken advantage of, separate affidavits of value and inventory must be made.

specified below, may be considered as granted for the whole of the United Kingdom.

(i) If the deceased died domiciled in England or Ireland, the affidavit of value may include and the duty be paid on the whole property situate in the United Kingdom, but the affidavit must specify separately the property in each kingdom. In such case the grant of probate or letters of administration can be made available in Scotland by producing the grant in the Commissary Court of the city of Edinburgh and depositing a copy thereof with the commissary clerk of that court, who shall write on the back or face thereof a certificate as near as may be in this form :

"I, A. B., commissary clerk (*or* commissary clerk deputy) of the city of Edinburgh, hereby certify that this grant of probate has (*or* these letters of administration have) been produced in the Commissary Court of the said city, and that a copy thereof has been deposited with me."

Such grant, after being duly stamped, is as available in Scotland as an actual confirmation.

(ii) If the deceased died domiciled in Scotland, the inventory to be exhibited in that kingdom may include, and the duty be paid on, the whole property situate in the United Kingdom, but the inventory must specify separately the property in each kingdom.

In such case the confirmation of executor of such person can be made available in England or

Ireland, by producing the same at the principal registry of the Probate Court and depositing a copy with the registrar of the court, and the Probate Court will then seal such confirmation and return it to the person producing it.

IX.—In cases in which a mistake has been made in the amount of duty payable, it can be rectified,

(*a*) When property has been overestimated and too much duty paid thereon :

Provisions in case of mistake as to amount of duty payable.

[1] In England and Ireland: If, on an application for probate or letters of administration, the value of the estate and effects in respect of which probate or letters of administration was or were granted was overestimated, and in consequence too high a stamp duty paid thereon, a return of the excess may be obtained, if within six calendar months after the true value is ascertained the probate or letters of administration be produced to the Commissioners of Inland Revenue, and a particular inventory and account and valuation of the estate and effects of the deceased, verified by an affidavit made by the person to whom probate or letters of administration was or were originally granted, be delivered to them. If the Commissioners are thereupon satisfied that too high a duty was originally paid, they may cancel and expunge the stamp on the probate or letters of administration, and substitute

[1] Probate Duty Act, s. 40; Ir. 56 Geo. 3, c. 58, s. 119.

another stamp for denoting the duty which ought to have been paid thereon, and make an allowance for the difference between them, as in the case of spoiled stamps, or repay the same in money, at their discretion.

[2] In Scotland: If on the exhibition of an inventory, the value of the estate and effects included therein has been overestimated, and in consequence too high a stamp duty has been paid, on exhibition by the executor of a corrected inventory showing the true value thereof, and on payment of the proper stamp duty thereon, the duty paid on the original inventory is allowed for as a spoiled stamp.

(*b*) When property has been underestimated and too little duty paid thereon.

[3] In England and Ireland: If, on an application for probate or letters of administration, the value of the estate and effects in respect of which they are granted has been underestimated, and in consequence too low a duty paid thereon, the probate or letters of administration may be procured to be duly stamped, on delivery to the Commissioners of Inland Revenue of an affidavit or affirmation of the value of the estate and effects of the deceased; and in cases of letters of administration on receipt by the Commissioners of Inland Revenue

[2] Common practice. There is no specific provision for doing it, but it is done.

[3] Probate Duty Act, s. 41; Ir. 56 Geo. 3, c. 56, s. 120.

of a certificate from the Probate Division or Probate Court that the administrator has given such security [4] as ought by law to have been given on the granting thereof, if the full value of the estate and effects of the deceased had been then ascertained:

(i) if an application be made within six calendar months after the discovery of the true value of the estate and effects, and the Commissioners be satisfied by affidavit or affirmation that the duty was originally paid in consequence of a mistake or misapprehension, or of its not being known at the time that some particular part of the estate and effects belonged to the deceased, and without any intention of fraud or of delaying the payment of the full and proper stamp duty;

then, on payment only of the sum which may be wanting to make up the duty which ought to have been at first paid thereon.

(ii) if the application be not made within six calendar months after the discovery of the true value of the estate and effects;

then, on payment of the full duty which ought to have been originally paid thereon in respect of such value, and of the further sum or penalty

[4] Bond, with one or more sureties conditioned for double the amount under which the estate and effects are sworn, unless the Court think fit to reduce the same. (20 & 21 Vict. c. 77, ss. 81, 82.) As the security cannot, except under very special circumstances, be given by anyone but the original administrator, it seems no one else is competent to apply to rectify the stamp thereon. (Probate Duty Act, s. 42; Ir. 56 Geo. 3, c. 56, s. 121.)

payable by law for stamping deeds after the execution thereof.[5]

Penalty.

[6] Any executor or administrator who neglects to apply, as in this section mentioned, within the said period of six months after discovering that too little duty has been paid, is liable to a forfeit of 100*l.*, and a further sum at and after the rate of 10*l.* per cent. on the amount of the sum wanting to make up the proper duty.

[7] An account of probates or letters of administration upon which the stamps have been rectified, together with the value of the estate and effects of the deceased on which such rectification proceeds, must be yearly sent by the Commissioners of Inland Revenue to the Probate Court.

In Scotland: [8] After an inventory has been exhibited of the estate and effects of a deceased person, and other effects belonging to such person not included therein have been subsequently discovered, anyone intromitting with or assuming the management of such estate and effects must, within two months after such discovery, whether such newly-discovered assets cause further stamp duty

[5] Viz., the sum of 10*l.*, with the addition, by way of further penalty, where the unpaid duty exceeds 10*l.*, of interest on such duty at the rate of five per cent. per annum from the day upon which the instrument was first executed up to the time when such interest is equal in amount to the unpaid duty. (33 & 34 Vict. c. 97, s. 15.)

[6] Probate Duty Act, s. 43; Ir. 56 Geo. 3, c. 56, s. 122.

[7] Ibid. s. 42; Ibid.

[8] Inventory Duty Act, ss. 38, 40.

to be payable or not, exhibit an additional inventory thereof, in the same manner and subject to the like provisions as original inventories. Such additional inventory must specify the amount and value of the estate and effects comprised in any former inventory or inventories, and duty must be paid thereon, so as to make up the full amount chargeable by law in respect of the total value of the estate and effects specified in all the inventories.

Credit given for duty.

X.—[1]In case the executor or administrator is unable to pay the probate duty out of his own moneys, and cannot get immediate possession of the whole or part of the estate and effects of the deceased, so as to enable him therewith to pay the duty payable thereon, the Commissioners of Inland Revenue, on satisfactory proof of the facts by affidavit or affirmation, may in any case which appears to them to require relief cause the probate or letters of administration, including letters *de bonis non*, to be duly stamped, and give credit for the duty payable thereon, and appoint a time for the payment thereof, and may subsequently give such further time for payment upon such terms and conditions as they may think fit. Security must first be given by the executor or administrator, together with two or more sufficient sureties to be approved of by the Commissioners, by a bond to her Majesty, her heirs and successors, in double

[1] Probate Duty Act, ss. 45–49.

the amount of the duty, for the due and full payment of the sum for which credit is given within six calendar months, or any less period, and of the interest for the same at the rate of 10*l.* per annum from the expiration of such period until payment thereof in case of any default of payment. Such duty is a debt from the estate or effects of the deceased to her Majesty, and must be paid in preference to any other debt due from the same estate. Any executor or administrator who pays any other debt in preference thereto is liable to pay the same out of his own estate, and also to forfeit the sum of 100*l.*

Probate or letters of administration, stamped on credit, must be deposited with the Commissioners, and will be delivered up to the executor or administrator only on payment of the duty, together with interest thereon if any, but must be produced in evidence, as occasion may require, by some officer of the Commissioners at the expense of the executor or administrator, and are as valid and available as if the duty for which credit is given had been paid.

In Scotland : [2]No credit can be given.

Subject of the duty.

XI.—The duty is payable on the gross[1] value, at

[2] There is no provision in the Acts for giving credit. Property of the deceased is recoverable in Scotland without confirmation of the testament or production of the inventory, and therefore the duty need not be paid before the property is recovered, so that no credit is needed.

[1] Gross, not nett. No deduction is to be made for debts in the first instance, though provisions are made for return of duty in respect of

the date[2] of the grant of probate or administration (or, in Scotland, of the making of the inventory) of all personal or movable[3] property belonging to a deceased person of whatever domicile, which was at the time of death either actually[4] situate within the [5]United Kingdom, or capable of immediate transfer by some act done there.

By personal property, for purposes of probate duty, is meant all property to the [6]beneficial enjoyment of which as personalty and not as realty the deceased was entitled at the time of death, whether [7]in possession, remainder, reversion, or contingently,

debts payable and actually paid out of personal estate. Mortgage debts, however, are, unless the testator expressed a contrary or other intention, chargeable on the mortgaged property in the first instance; and by 31 & 32 Vict. s. 124, s. 7, mortgage debts chargeable on leaseholds may be deducted for purposes of probate duty from the value of the leaseholds. (Probate Duty Act, s. 38, &c.)

[2] *Doe* d. *Richard* v. *Evans*, 16 L. T. (Q. B.) 305; *Lord* v. *Colvin*, L. R. 3 Eq. 737; and as to Scotland, by statute 23 & 24 Vict. c. 80, s. 5. Cf. *Attorney-General* v. *Partington*, L. R. 4 H. L. 100, where interest on the property up to the date of the affidavit from the decease of the intestate was held liable. The affidavit should include an apportioned account of rents up to date of the death.

[3] Probate Duty Act, s. 37. Personal in England and Ireland; movable in Scotland. The two terms are not identical in meaning, as charges on land in Scotland, whether heritable securities, or rent-charges, or grants of rents of lands, are immovable. But as to these, *see* ss. 3 and 4, pp. 2 and 4, *sup.*

[4] "Situate, &c., within the United Kingdom." *See* Appendix A, note 1.

[5] "The United Kingdom." For probate duty purposes, probate, or letters of administration, taken out in England or Ireland, or inventory exhibited in Scotland, according to domicile of deceased, includes all property in the United Kingdom: 20 & 21 Vict. c. 29, ss. 94, 95; 21 & 22 Vict. c. 56, ss. 9, 1–217. *See* s. 8, *sup.*

[6] "Beneficial." Not as trustee or mortgagee, though the grant of probate includes such estates for purposes of representation. Cf. s. 6, *sup.*

[7] *Lord* v. *Colvin*, L. R. 3 Eq. 737; *Executors of Perry* v. *The Queen*, L. R. 4 Exch. 27; Lord Wensleydale in *Attorney-General* v. *Brunning*, 8 H. L., at p. 262. And *see* Appendix A, note 1.

or [8]over which he possessed and exercised by will an absolute power of appointment.

ILLUSTRATIONS.

(*A*) As to Realty: No realty situate abroad is liable to duty, but of realty situate in the United Kingdom belonging to any person deceased wherever domiciled or resident—

(i) A freehold estate free from incumbrance,

(ii) A freehold estate subject to a mortgage,

as being pure realty, are not included in the probate, and pay no duty.

(iii) A freehold estate held by him as trustee under his uncle's will,

as the deceased was not entitled beneficially, pays no duty.

(iv) A freehold estate vested in him as mortgagee,

as the deceased was not entitled beneficially, pays no duty. The mortgage-money due on it will of course be included in the personalty and pay duty.

(v) A freehold estate directed to be sold by will, or by deed revocable by the testator,

as being enjoyed by the testator at the time of his death as realty, is not liable to duty.[1]

(vi) A freehold estate contracted by testator to be sold, even though subject to purchaser making a good title to be approved by the court,

as being converted into personalty at time of testator's death, is liable to duty.[2]

(vii) A freehold estate let on lease for seven years, with option to lessee to purchase within that time, such option exercised after testator's death,

as being converted by relation back to time of granting of lease, is liable to duty.[3]

[8] 23 Vict. c. 15, ss. 4, 5.

[1] *Matson* v. *Swift*, 8 Beav. 368.

[2] *Attorney-General* v. *Brunning*, 8 H. L. 243.

[3] *Lord* v. *Colvin*, L. R. 15 Eq. 742, citing *Lawes* v. *Bennett*, 1 Cox, 167, and *Townley* v. *Bedwell*, 14 Ves. 59; but see Appendix A, note 1, *inf.*

(viii) A freehold estate forming part of partnership assets, but held by testator and his partner subject to such uses as they should jointly appoint, and in default of such joint appointment as to one moiety thereof to such uses as the testator should by deed or will appoint, and in default to the testator in fee, and as to the other moiety to such uses as the testator's partner should appoint, and in default to the partner in fee. Such first-mentioned moiety appointed by will of testator,

as being *de facto* realty and enjoyed by testator as such, although liable to be converted as partnership assets, is not liable to duty.[4]

(ix) A freehold estate held by testator and partner to the use of them and their heirs, forming part of partnership assets,

as being partnership assets, in the absence of any direction expressly excluding conversion, is converted as from date of partnership and pays duty.[5]

(x) Growing crops or emblements passing to devisee of real estate,

as realty do not pay duty.

(xi) Growing crops or emblements at death of tenant for life or on death of tenant in tail or fee intestate,

as personalty, passing to executors and administrators of deceased, to exclusion of the next in succession or heir, do not pay duty.

(xii) Profits from tolls of lighthouse, and any profits of land as such,

as realty not included in probate or liable to probate duty.[6]

[4] *Custance* v. *Bradshaw*, 4 Hare, 315.

[5] *Forbes* v. *Steven*, L. R. 10 Eq. 178.

[6] *Attorney-General* v. *Jones*, 1 Mac. & G. 574. An apportioned part of rents of real estate, up to the day of death, should, however, be included in affidavit, and is liable to duty.

(xiii) A rent-charge of 500*l.* a year, issuing out of freehold estate, and limited to testator and his heirs,

as realty is not included in probate, and not liable to probate duty.

(xiv) A rent-charge of 500*l.* a year given to the use of A for his life, and after his death to be continued and divided equally between the testator and C and D his sisters, during their lives, or the life of the longest liver of them. Testator predeceased A, and devised his property to C and D. After A's death, duty claimed on the rent-charge, but

as being an estate, *pur autre vie*, not liable to special occupancy (being an incorporeal hereditament) goes to the executors, and is included in probate, and is distributable as personal property, but as being realty to the testator no probate duty is payable.[7]

(*B*) As to Chattels Real: No chattels real situate abroad are liable to duty, but of chattels real situate in the United Kingdom—

(i) A leasehold farm in Hampshire held for the longest of three lives,

as personalty pays probate duty.

(ii) A leasehold house in London, held for a term of 999 years, subject to a mortgage for 1,000*l.*,

as personalty pays probate duty, but the value of the mortgage is deducted from the value of the leasehold.[8]

(iii) A leasehold house in Scotland held for term of years,

as by Scotch law immovable or real property pays no duty.

(iv) A leasehold house in Paris held by an Englishman,

as not being within the United Kingdom, and so out of jurisdiction of Probate Court, pays no probate duty.

[7] *Chatfield* v. *Berchtoldt*, L. R. 7 Ch. 192.

[8] 21 & 22 Vict. c. 124, s. 5, and above sect., note 1.

(v) A leasehold house in London held by a Frenchman domiciled in France,

as being within the United Kingdom a separate administration must be taken out in England to deal with it, and therefore pays probate duty.[9]

(*C*) As to Chattels Personal: Of deceased wherever domiciled or resident—

(i) Goods, chattels, and household effects in England,

as being personalty situate here pays duty.[10]

(ii) Goods, chattels, and household effects in Paris,

as being personalty not situate in the United Kingdom do not pay duty.[10]

(iii) Foreign bills of exchange, payable to order,

as being salable here, pay duty.[11]

(iv) Furniture and household goods of deceased, on their way to United Kingdom at the time of but arriving after his death,

as being *in transitu* to this country and capable of being dealt with here, pay duty.[12]

(v) Cargo of silk, &c., consigned to the deceased, on its way to United Kingdom at time of but arriving after testator's death,

as being capable of being dealt with here by bill of lading, pays duty.[12]

(vi) Ships or parts of ships, belonging to deceased, registered at port of United Kingdom, whether situate at time of death in United Kingdom, on the high seas, or in foreign port,

as being by statute declaratory of common law situate in United Kingdom, pay duty.[13]

[9] See text of this section above. Illustrations (iv) and (v) show the distinction between legacy and probate duty. (iv), though not liable to probate duty, would be liable to legacy duty, for which purpose the domicile of the owner, and not the local situation of the property, is considered; while (v), though liable to probate duty, would not pay legacy duty, for the same reason.

[10] *Thomson* v. *Advocate-General*, 12 Clk. & Fin. 1.

[11] *Hunt* v. *Stevens*, 3 Taunt. 113.

[12] *Attorney-General* v. *Pratt*, L. R. 9 Exch. 140.

[13] 27 & 28 Vict. c. 56, s. 4.

(vii) Ships belonging to deceased, registered at foreign port but lying in port of United Kingdom at time of death,

as being actually situate in United Kingdom, pay duty.

(viii) Ships registered in foreign port and situate on high sea or elsewhere than in United Kingdom at time of death,

as being neither actually nor in contemplation of law situate here, pay no duty.[13]

(ix) Share of partnership property converted into personalty as partnership assets,

inasmuch as the deceased's right is to make survivor account for share of surplus after payment of debts of partnership, when the head office of partnership is in United Kingdom, but not otherwise, the duty is payable on such net share.[14]

(*D*) As to Stocks, Shares, &c., belonging to deceased person wherever domiciled or resident.

(i) Consols and parliamentary funds of United Kingdom,

as personalty, pay duty.[15]

(ii) Russian, Danish, and Dutch bonds passing by delivery, situate at time of death in United Kingdom,

as personalty situate and capable of being transferred in United Kingdom, pay duty.[16]

(iii) French rentes only transferable in Paris,

as not being situate or capable of being transferred here, do not pay duty.[17]

(iv) All Indian Government promissory notes, the interest whereon shall be payable in London, and which at the time of testator's decease shall have been registered in the books of the Secretary of State for

[13] 27 & 28 Vict. c. 56, s. 4.

[14] Practice of Inland Revenue Commissioners; but, as to whether the practice is right, see Appendix A, note 3. It is doubtful whether chattels would pay duty or not according to local situation, as they vest in executors of deceased jointly with surviving partners: *Buckley* v. *Barber*, 6 Exch. 164.

[15] 33 & 34 Vict. c. 71, s. 9.

[16] *Attorney-General* v. *Bowens*, 4 M. & W. 171.

[17] *Attorney-General* v. *Dimond*, 1 C. & J. 356; *Attorney-General* v *Hope*, 8 Bligh, 44.

India in Council in London, or in the books of the Governor and Company of the Bank of England, or shall have been enfaced in India for the purpose of being so registered,[18]

(v) Indian Government promissory notes with coupons attached, if such notes are registered according to regulations made from time to time by Secretary of State for India in Council,[18] [19]

(vi) Securities issued or stock created in lieu of such Indian Government promissory notes,

(iv) (v) (vi) by statute made liable to duty.[18]

(vii) New River shares,

as being by Act of Parliament constituting the company made real estate, pay no duty.[20]

(viii) Shares in United Kingdom companies, not declared by charter or Act of Parliament or deed of settlement to be personalty,

when the shareholders have an interest in land as land and not as money, are realty and pay no duty.[21]

(ix) Shares in companies subject to provisions of Lands Clauses Consolidation Act, 1845, or Companies Act, 1862, whether such shares are within the United Kingdom at time of testator's death or not,

as personalty situate in the United Kingdom, and being only transferable here, pay duty.[22]

(x) Shares in company whose head office is situate out of United Kingdom, and has agents but no place of business or management in United Kingdom,

[18] 23 Vict. c. 5, ss. 1, 2.

[19] No such regulations have been made.

[20] By charters and Acts of Parliament creating the Company.

[21] The case put is barely within the range of possibility. *See*, as to railways, *Linley* v. *Taylor*, 2 De G. F. & J. 84; as to canals, *Edwards* v. *Hall*, 6 De G. M. & G. 74; as to waterworks, *Bligh* v. *Brent*, 2 Y. & C. Exch. 268; as to cost-book mining companies, where no direction as to shares was made, but it was held that the shares were pure personalty, and not within the Mortmain Acts, *Hayter* v. *Tucker*, 4 K. & J.

[22] 8 & 9 Vict. c. 16, s. 7; and 25 & 26 Vict. c. 89, s. 22.

as situate where head office is, pay no probate duty.[23]

(xi) Shares in company whose head office is situate out of United Kingdom, but which has a place of business in United Kingdom, if such shares are in United Kingdom at time of death,

as situate in United Kingdom, pay duty.[23]

(xii) Share warrants passing by delivery under Companies Act, 1867, ss. 27–29,

(*a*) if situate in United Kingdom at time of death, pay duty.[22]

(*b*) if situate out of United Kingdom at time of death, pay no duty.

(*E*) As to Debts[24] due to person dying resident in United Kingdom—

(*a*) *Simple Contract Debts:*

(i) Debts due from any person, foreigner or otherwise, residing in the United Kingdom at time of creditor's death,

as being recoverable by the creditor here, and therefore situate here at time of his death, pay duty.

[22] 8 & 9 Vict. c. 16, s. 7; and 25 & 26 Vict. c. 89, s. 22.

[23] *Attorney-General* v. *Higgins*, 2 Exch. 339; but if Lord St. Leonards' judgment in *Carron Iron Company* v. *Maclean*, 5 H. L. 449, is authoritative, a company may have two domiciles for purposes of jurisdiction, and though, too, its head office is in one country, may yet be domiciled or reside in another country if it has a place of business in that other country—a doctrine supported by the view taken by Romilly, M.R., in *Fernandez Executors' case*, L. R. 5 Ch. 315, where he held that the shares of a company whose head office was in London, but which carried on business in India, were not liable to probate duty here. He was reversed on appeal by the Lords Justices, but on the ground that, the head office being in London, duty was payable here, the shares being in this country; but it is probable that probate duty was also payable (as it had already been paid) in India in respect of the same shares. If the foreign company has an office in England registered under the Companies Acts, it is almost certain that shares therein would be liable to probate duty here: *Re General Company for the Promotion of Land Credit*, L. R. 5 Ch. 363.

[24] *See* Appendix A, note 3.

(ii) Debts due from person domiciled in United Kingdom, residing or actually abroad at the time of creditor's death, and having no property in this country,

as not being recoverable here do not pay duty.

(iii) Debts due from foreigner domiciled and residing abroad, but having property here at time of testator's death,

as being recoverable here pay duty.[25]

(iv) Debts due from foreigner domiciled and residing abroad at time of testator's death, even if he afterwards come within the jurisdiction, if he have no property in this country at time of the testator's death,

as not being recoverable here at time of testator's death pay no duty.

(*b*) *Specialty Debts; i.e., Debts due on an instrument under seal:*

(i) Debts due from person resident in United Kingdom at time of testator's death, whether the instrument is in the United Kingdom at such time or not,

as being situate here pay duty.[26]

(ii) Debts due from persons resident abroad at the time of testator's death, [27] when the instrument is not within the United Kingdom at such time,

as not situate or recoverable here pay no duty.

(iii) [28] When the instrument is within United Kingdom at time of death, if the debtor has property that can be seized in execution in this country at time of testator's death,

as being recoverable here pay duty; if the debtor has not such property here do not pay duty.[28]

[25] This is merely submitted as what the rule ought consistently to be. It is not the practice, and would, perhaps, be inconvenient if it were; but *see* Appendix A, note 3.

[26] 25 & 26 Vict. c. 22, s. 39.

[27] It is questionable whether it matters where the instrument is. *See* Appendix A, note 3, pp. 51, 52.

[28] It follows that debts due even from a foreigner on a mortgage of property in this country pay duty whenever the mortgage deed is in this country at time of the mortgagee's death.

Return of duty in respect of debts.

XII.—[1]On proof by [2]oath and proper vouchers to the satisfaction of the Commissioners of Inland Revenue that [3]debts due and owing from the deceased, payable by [4]law out of his or her personal or movable estate, other than voluntary debts payable on his or her death or debts payable under an instrument which has not been delivered to the deceased three months before the death, have been paid by the executor or administrator to an amount such as to reduce the value of the estate and effects in respect of which probate or letters of administration were granted or inventory exhibited, to a sum which if it had been the whole gross amount or value of such estate and effects would have occasioned a less stamp duty to be paid thereon than has been actually paid, the Commissioners must[5] return the difference, if such return be claimed within three years from the date of the grant of probate or letters of administration or the recording of the inventory; but where by reason of any proceeding at law or in equity the debts due from the deceased have not been ascertained or paid, or the effects of the deceased have not been recovered and made available, and in consequence

[1] 5 & 6 Vict. c. 79; Ir. 56 Geo. 3, c. 58, s. 129.

[2] Not affirmation in this case: *Hanson*, p. 84.

[3] As to what constitutes a debt from the deceased, *see* illustrations *A*, *inf.*

[4] Not by the testator's direction. *See* illustration *C*, *inf.*

[5] The claim, if refused by the Commissioners, should, if desired, be made by Petition of Right, under 23 Vict. c. 34, before the Exchequer Division.

the executor or administrator has been prevented from making such claim within the term of three years, the Commissioners may allow such further time for making the claim as may seem reasonable to them under the circumstances of the case.

ILLUSTRATIONS.

(*A*) (i) A dies possessed of real and personal property directed to be sold and converted by his father's will, out of which he is bound to pay an annuity of 100*l.* a year to his brother.

This annuity is a debt from A, and a return of duty can be obtained on its value, calculated according to the table for valuing annuities annexed to the Succession Duty Act.

(ii) By A's marriage settlement 30,000*l.* is settled on A for life, remainder to his wife for life, the capital divisible amongst the children in such shares as A shall appoint; remainder to A in fee; A, by will, gives 10,000*l.* to B, one of the children of the marriage, in lieu of any share in the settled moneys.

The 10,000*l.* is a legacy and not a debt due from A, though B may be put to his election. No return of duty will be made in respect thereof.

(iii) Under a similar settlement, A covenants on the marriage of B to pay 10,000*l.* to the trustees of B's marriage settlement.

Such sum of 10,000*l.* becomes a debt from A, and on A's death duty is returnable in respect of it.

(iv) A, on the marriage of B, his daughter, covenants to bequeath by will or otherwise provide that a certain share of his residuary estate should go to her. A bequeaths such share by will, B takes as legatee, and not as creditor, and no return of duty can be made in respect of such bequest.[1]

(v) Under Scotch law by pre-nuptial contract, A contracts

[1] *Jarvis* v. *Wolferston*, L. R. 18 Eq. 18.

to lay out a capital sum to secure a free life rent annuity and to take the rights and titles thereof to him and his wife in conjunct fee, and life rent for her life rent use in case she survive him, and to the children to be procreated betwixt them, whom failing, to the said A in fee. Power to A to apportion the same among the children. After wife's death A, by will, in exercise of the power gives 10,000*l.* to B, one of the children of the marriage, in lieu of any share of the moneys commuted to be settled and in discharge of the warrant in the settlement. The right of the children could not be defeated by a gratuitous deed, but could be by creditors or for "onerous cause."

The 10,000*l.* is a debt from A, and duty is returnable in respect thereof, because B took as a creditor and not by succession.[2]

(vi) Under Scotch law by pre-nuptial contract A disposes of his whole estate, heritable and movable, and to and in favour of himself and wife in conjunct fee and life rent, and to the children of the marriage or their issue in fee, and bound himself to settle after-acquired property. The right of the children could be defeated by A parting with his property gratuitously.

The share of B, one of the children, in the property actually left by A, is not a debt from A, and 10,000*l.* left by will in lieu thereof is not a debt, because A is not bound to pay it. He might leave no movable property at all. Hence no return of duty will be made.[3]

(*B*) (i) The devisee of lands subject to mortgage dies, not having paid off the mortgage debt. His executors pay the debt out of his personal estate.

Such debt was not a debt due from the devisee, although he was liable to be sued for it under 2 Geo. 4, and 1 Wm. 4, c. 47, s. 3, until the statute was acted upon and a judgment obtained. Duty not returned.[4]

[2] *Lord Advocate* v. *Hagart*, L. R. 2 H. L. Sco. 217.

[3] *Moir's Trustees* v. *Lord Advocate*, 1 Sco. Sess. Ca. 345.

[4] *Re Taylor*, 8 Exch. 384, and *see per* Sir J. Leach, M.R., 3 M. & K. 624.

(ii) The purchaser of an equity of redemption dies, not having covenanted with the mortgagee for payment of the mortgage debt. His executors pay off the mortgage debt out of his personal estate.

The mortgage debt was not a debt payable by law out of the purchaser's personal estate. No return of duty made in respect thereof.[4]

(*C*) (i) Testator dies, having devised and bequeathed his real and personal estate to trustees, on trust, to sell, and directed his debts to be paid out of the proceeds of such sale. All the debts are paid out of the mixed fund.

Return of duty is obtainable, as "by law" means "independently of any direction of the testator," and the debts will be taken as paid out of the personalty.[4]

(ii) A dies, possessed of realty and personalty, being bound by his father's will to pay an annuity of 100*l.* a year to his brother thereout. The annuity is payable out of realty and personalty proportionally.

Return of duty can only be obtained proportionally to the amount payable out of the personalty.[5]

(iii) A testator dies, domiciled in England, leaving personalty in England and India and debts due to persons in England. The executors exhaust the English assets in paying such debts.

Duty is returnable for the whole amount of debts, and the debts are not apportioned between Indian and English assets.[6]

(iv) A testator dies, domiciled in the United Kingdom, leaving personalty in England and abroad and debts due to persons resident in a foreign country. The executors apply the personalty in the United Kingdom to the payment of such debts.

[5] *Percival's Executors* v. *The Queen*, 3 H. & C. 217.
[6] *R.* v. *Commissioners of Stamps, Ostell's case*, 18 L. J. (Q. B.) 201.

Duty is returnable in respect of the personalty so applied.

(v) A dies, domiciled in France, owing debts in France, leaving personal estate here. The executors apply the personalty here to paying the French debts.
Duty not returnable.[7]

XIII.—In the following cases exemption from duty is allowed:

Exemptions from duty.

1. Estate under 100*l.*

1. [1]Probate, letters of administration, and inventory in any case where the whole estate and effects of the deceased (exclusive of what he was possessed of or entitled to as a trustee for any other person or persons and not beneficially) is sworn to exceed and does not actually exceed in value the sum of 100*l.*

2. Soldier, sailor, or marine dying in her Majesty's service.

2. [2]Probate of will, letters of administration, and inventory of the effects of any common seaman, marine, or soldier, who is slain or dies in the service of her Majesty, her heirs and successors.

3. Officer, &c., in certain cases.

3. [3]In the case of any officer or soldier dying on service, whose personal estate (after paying the preferential charges mentioned in the Regimental Debts Act, 1863) does not exceed 100*l.* in value, such estate may be distributed without representa-

[7] *See Ostell's case*, and also remark of Wightman, J., in *R.* v. *Commissioners of Stamps, Wallace's case*, 9 Q. B. 637. Debts have no locality; the doctrine of *bona notabilia* does not apply to debts owing by the deceased: *Hanson*, p. 186.

[1] 27 & 28 Vict. c. 56, s. 5, raising the limit of exemption from 20*l.*, the amount specified in schedule to Probate Duty Act, to 100*l.*

[2] Probate Duty Act schedule.

[3] Regimental Debts Act, 1863; 26 & 27 Vict. c. 57, ss. 5, 11, 15, 24.

tion being taken out to the deceased, and consequently without payment of duty.

4. Amount due in Admiralty books to deceased under 100*l*.

4. [4]On the death of any person being or having been a naval or marine officer, seaman, or marine, the amount, if any, to the credit of the deceased in the books of the Admiralty or other amount payable by the Admiralty, and on the death of any person being or having been employed in any of her Majesty's dockyards or other naval establishments, or in any of the civil departments of the navy, or entitled to an allowance from the compassionate fund, or of any widow entitled to a pension on the establishment of the navy, the amount (if any) due by the Admiralty, if under 100*l*., may be distributed by the Admiralty without representation being taken out to the deceased, and is not liable to payment of duty.

5. Prize money and moneys chargeable to army votes due to deceased under 100*l*.

5. [5]On the death of any person entitled to civil or military allowances, chargeable to the army votes or to army prize-money to an amount not exceeding 100*l*., the amount may be distributed by the Secretary of State for War, or the Governor of Chelsea Hospital, without representation having been taken out to the deceased, and is not liable to probate duty.

6. Arrears of civil pay and pensions under 100*l*.

6. [5]On the death of any person entitled to arrears of civil pay allowances or annuities granted

[4] Navy and Marines (Property of Deceased) Act, 1865, 28 & 29 Vict. c. 111, ss. 3, 4, 6, 15.

[5] 31 & 32 Vict. c. 90, ss. 1, 2, extending 27 & 28 Vict. c. 36, s. 3. In both these cases, other property is not taken into account. However large the rest of the estate these payments are exempt.

by authority of Parliament, not exceeding 100*l.*, such moneys may be paid by the Commissioners of Treasury, or such departments as they may depute, to the persons entitled as representatives of the deceased without representation being taken out, and no duty is payable thereon.

7. Sums under 50*l.* due to intestates' nominees from Friendly Societies.

7. [6]In the case of Friendly Societies registered under the Friendly Societies Acts, sums not exceeding 50*l.* may be paid to the nominee named in accordance with the provisions of the Act by any member entitled to such sums, or in default of such nomination, in cases of intestacy, to the person who appears to a majority of the trustees upon such evidence as they may deem satisfactory to be entitled by law to receive the same, in either case without administration being required to be taken out to the deceased in respect of such sums, and without payment of probate duty thereon.

8. Additional inventory in Scotland.

8. [7]Additional inventory to be exhibited and recorded in any Commissary Court in Scotland, where the same shall not be liable to a duty of greater amount than the duty already paid upon any former inventory exhibited and recorded of the estate and effects of the person.

9. [8]All second and subsequent grants of probate

[6] Friendly Societies Act, 1875; 38 & 39 Vict. c. 60, s. 15, sub-s. 2–4. Wills of such sums are not exempt from the necessity of probate or payment of probate duty.

[7] Probate Duty Act schedule.

[8] 41 Geo. 3, c. 86, s. 3; *e.g.* in cases of double probate when an executor proves to whom power to prove is reserved by the original grant. He has to include in the affidavit of value the whole of the

or administration in respect of property on which the full duty has been paid upon a previous grant.

SCHEDULE.

Probate of a will and letters of administration with a will annexed, to be granted in England;

[1] Confirmation of any testament testamentary, or eik thereto, to be expeded in any Commissary Court in Scotland, where the deceased shall have died before or upon the 10th day of October, 1808, and subsequent to the 10th day of October, 1804;

Inventory to be exhibited and recorded in any Commissary Court in Scotland of the estate and effects of any person deceased who shall have died after the 10th day of October, 1808, and shall have left any testament or testamentary disposition of his or her personal or movable estate or effects, and any part thereof;

Where the estate and effects for or in respect of which such probate, letters of administration, confirmation, or eik respectively, shall be granted or expeded, or whereof such inventory shall be exhibited or recorded, exclusive of what the deceased shall have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially, shall be:

	£		£		Duty. £
Above the value of	100	and under	200	...	2
Of the value of	200	,,	300	...	5
,,	300	,,	450	...	8
,,	450	,,	600	...	11

testator's estate, and not merely the portion which remains unadministered; but *see In the Goods of Bell*, L. R. 2 P. & D. 247. In cases of administration *de bonis non*, the affidavit need include only the unadministered property. When the beneficial enjoyment or title of the property has passed through more than one person, grants of representation must be taken out, and duty paid in respect of each such person, and these grants will not be exempt from duty: *Attorney-General* v. *Partington*, L. R. 4 H. L. 100, and p. 5, xi. n. 7, *sup.*

[1] By 48 Geo. 3, c. 149, s. 42 (see p. 71), confirmation is only to be granted for effects included in the inventory.

	£		£		Duty. £
Of the value of	600	and under	800	...	15
,,	800	,,	1,000	...	22
,,	1,000	,,	1,500	...	30
,,	1,500	,,	2,000	...	40
,,	2,000	,,	3,000	...	50
,,	3,000	,,	4,000	...	60
,,	4,000	,,	5,000	...	80
,,	5,000	,,	6,000	...	100
,,	6,000	,,	7,000	...	120
,,	7,000	,,	8,000	...	140
,,	8,000	,,	9,000	...	160
,,	9,000	,,	10,000	...	180
,,	10,000	,,	12,000	...	200
,,	12,000	,,	14,000	...	220
,,	14,000	,,	16,000	...	250
,,	16,000	,,	18,000	...	280
,,	18,000	,,	20,000	...	310
,,	20,000	,,	25,000	...	350
,,	25,000	,,	30,000	...	400
,,	30,000	,,	35,000	...	450
,,	35,000	,,	40,000	...	525
,,	40,000	,,	45,000	...	600
,,	45,000	,,	50,000	...	675
,,	50,000	,,	60,000	...	750
,,	60,000	,,	70,000	...	900
,,	70,000	,,	80,000	...	1,050
,,	80,000	,,	90,000	...	1,200
,,	90,000	,,	100,000	...	1,350
,,	100,000	,,	120,000	...	1,500
,,	120,000	,,	140,000	...	1,800
,,	140,000	,,	160,000	...	2,100
,,	160,000	,,	180,000	...	2,400
,,	180,000	,,	200,000	...	2,700
,,	200,000	,,	250,000	...	3,000
,,	250,000	,,	300,000	...	3,750
,,	300,000	,,	350,000	...	4,500
,,	350,000	,,	400,000	...	5,250
,,	400,000	,,	500,000	...	6,000
,,	500,000	,,	600,000	...	7,500
,,	600,000	,,	700,000	...	9,000
,,	700,000	,,	800,000	...	10,500
,,	800,000	,,	900,000	...	12,000
,,	900,000	,,	1,000,000	...	13,500
,,	1,000,000 and upwards				
	for every 100,000 and fraction thereof			...	15,000

Letters of administration, without a will annexed, to be granted in England;

Confirmation of any testament dative, to be expeded in any Commissary Court in Scotland, where the deceased shall have died before or upon the 10th day of October, 1808, and subsequent to the 10th day of October, 1804 ;

Inventory to be exhibited and recorded in any Commissary Court in Scotland of the estate and effects of any person deceased who shall have died after the 10th day of October, 1808, without leaving any testament or testamentary disposition of his or her personal or movable estate, or effects, or any part thereof ;

Where the estate and effects for or in respect of which such letters of administration or confirmation respectively shall be granted or expeded, or whereof such inventory shall be exhibited and recorded, exclusive of what the deceased shall have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially, shall be :

	£		£		Duty. £
Above the value of	100	and under	200	...	3
Of the value of	200	,,	300	...	8
,,	300	,,	450	...	11
,,	450	,,	600	...	15
,,	600	,,	800	...	22
,,	800	,,	1,000	...	30
,,	1,000	,,	1,500	...	45
,,	1,500	,,	2,000	...	60
,,	2,000		3,000	...	75
,,	3,000	,,	4,000	...	90
,,	4,000	,,	5,000	...	120
,,	5,000	,,	6,000	...	150
,,	6,000	,,	7,000	...	180
,,	7,000	,,	8,000	...	210
,,	8,000	,,	9,000	...	240
,,	9,000	,,	10,000	...	270
,,	10,000	,,	12,000	...	300
,,	12,000	,,	14,000	...	330
,,	14,000	,,	16,000	...	375
,,	16,000	,,	18,000	...	420
,,	18,000	,,	20,000	...	465
,,	20,000	,,	25,000	...	525
,,	25,000	,,	30,000	...	600
,,	30,000	,,	35,000	...	675
,,	35,000	,,	40,000	...	785
,,	40,000	,,	45,000	...	900

	£		£		Duty. £
Of the value of	45,000	and under	50,000	...	1,010
,,	50,000	,,	60,000	...	1,125
,,	60,000	,,	70,000	...	1,350
,,	70,000	,,	80,000	...	1,575
,,	80,000	,,	90,000	...	1,800
,,	90,000	,,	100,000	...	2,025
,,	100,000	,,	120,000	...	2,250
,,	120,000	,,	140,000	...	2,700
,,	140,000	,,	160,000	...	3,150
,,	160,000	,,	180,000	...	3,600
,,	180,000	,,	200,000	...	4,050
,,	200,000	,,	250,000	...	4,500
,,	250,000	,,	300,000	...	5,625
,,	300,000	,,	350,000	...	6,750
,,	350,000	,,	400,000	...	7,875
,,	400,000	,,	500,000	...	9,000
,,	500,000	,,	600,000	...	11,250
,,	600,000	,,	700,000	...	13,500
,,	700,000	,,	800,000	...	15,750
,,	800,000	,,	900,000	...	18,000
,,	900,000	,,	1,000,000	...	20,250
,,	1,000,000 and upwards				
	for every 100,000 and fraction thereof			...	2,500

APPENDIX A.

NOTE I.

Subject of the Duty.

The rule has been laid down as "all property which the executor *qua* executor, *i.e.* if he had been merely appointed executor by the testator without any further direction, can recover, whether in a court of law or equity," or, in other words, "legal assets." (*Attorney-General* v. *Brunning*, 8 H. L. 243, adopting Vice-Chancellor Kindersley's definition of legal assets in *Cooke* v. *Gregson*, 3 Drewry, 547). But that rule is too wide, for estates *pur autre vie*, in the absence of a special occupant, now vest in the executor or administrator as such, and are legal assets, but they are not subject to probate duty (*Chatfield* v. *Berchtoldt*, L. R. 7 Ch. 192). So, too, damages under Lord Campbell's Act, 9 & 10 Vict. c. 93, are recoverable by the executor as such, but duty is not payable on the amount recovered. It is true, indeed, that the estate *pur autre vie* is a freehold estate and realty, but it goes to the personal representative as such, and it is true that damages under Lord Campbell's Act never really form part

of the testator's estate; still they vest in the executors and administrators, and are distributed as if they did form part of his estate. It is useless to lay down a rule in a form which at once raises exceptions.

The question as to whether the executor does recover, *virtute officii*, might, moreover, lead to antiquarian discussions, not capable of being satisfactorily settled, as to what part of the estate of the deceased the ordinary might apply in *pios usus*, as in *Attorney-General* v. *Dimond*, 2 Cr. & J. 356; *Attorney-General* v. *Hope*, 2 Cl. & F. 84; and *Attorney-General* v. *Brunning*, 8 H. L. 247, 257.

The rule in the text, "All property to the beneficial enjoyment of which as personalty," &c., has been adopted from *Matson* v. *Swift*, 8 Beav. 368, and *Custance* v. *Bradshaw*, 4 Hare, 315, which cases were discussed and approved in *Attorney-General* v. *Brunning*, p. 257. It is nearer to the words of the original Act (Probate Duty Act, s. 37), making the duty payable by "any person who shall take possession of or in any manner administer any part of the personal estate and effects of the deceased," and more fully expresses the results of the decided cases, and has the further advantage of setting at rest the doubt as to whether property converted after testator's death is liable to the duty; it having been decided, in *Matson* v. *Swift*, and *Custance* v. *Bradshaw*, *sup.*, that the duty was not payable in respect (i) of property directed by a revocable deed

or by will to be sold, if enjoyed by the testator as land or realty, and not as personalty, when he died, and (ii) of freehold property enjoyed by partners in a firm in equal undivided shares as realty.

The only doubt that can be thrown on the rule as stated in the text arises from the remarks of Malins, V.C., in *Lord* v. *Colvin*, L. R. 3 Eq. 742, where, in deciding that contingent interests were subject to probate duty as much as interests in possession, he says: "It is clearly settled that the duty attaches upon all the estate of the testator or intestate which is of a personal nature at the time of his death, or *which by subsequent events becomes so.* In the case of *Attorney-General* v. *Brunning*, it was decided that it attached upon the value of real estate which the testator had by a binding and valid contract agreed to sell in his lifetime, though it remained real estate in his hands at the time of his death; and upon the principle decided by that case there can be no doubt that if a testator, as in *Lawes* v. *Bennett*, 1 Cox, 167, and *Townley* v. *Bedwell*, 14 Ves. 591, granted a lease of his real estate, and gave the lessee the option of becoming the purchaser, and that option was not exercised for some years after his death, so that the property at his death devolved on his heir as real estate; yet on the option being afterwards exercised, it would operate as a conversion of the property *as from the date of the lease*, and probate duty would become payable upon the amount of the purchase-money."

On this it may be observed that the decision in *Attorney-General* v. *Brunning* went on the very fact that the real estate contracted to be sold did not remain in the testator's hands *as realty* at the time of his death, but was in view of equity personalty, the testator being merely a trustee of the land for the purchaser. This, indeed, was the very point which distinguished that case from *Matson* v. *Swift*, where land was only directed and not contracted by the testator to be sold, such direction being revocable, and in consequence there was no conversion as against the testator, and the duty was held not payable.

It may be further remarked that the statement that, in *Lawes* v. *Bennett*, the property was held to be converted as from the date of the lease, is inaccurate, for in that case Kenyon, M.R., says: "It is very clear that if a man seised of real estate contract to sell it, and die before the contract is carried into execution, it is personal property of him" (words adopted by Lord Chelmsford in his judgment in *Attorney-General* v. *Brunning*, p. 265), and continues: "The only possible difficulty in this case is that it is left to the election of the lessee whether it shall be real or personal. . . When the party who has the power of making the election has elected, the whole is to be referred back to the original agreement, and the only difference is that the real estate is *converted at a future period.*" In *Townley* v. *Bedwell*, where the circumstances were precisely

similar, Eldon, L.C., referring to his own note on the former case (not then reported in Cox), after remarking that Lord Kenyon made the decree in that case, observing that though the testator could not have compelled the lessee to purchase, the money was *at the time of the election* compelled to be considered as the personal estate of the testator, says: "That case was very much argued, and I do not mean to say that a great deal may not be urged against it; but where there is a decision precisely in point, it is better to follow it" (an observation which shows, as pointed out by Knight-Bruce, V.C., in *Emuss* v. *Smith*, 2 De G. & Sm. 734, that Lord Eldon thought *Lawes* v. *Bennett* had gone far enough); "therefore the rents of the premises demised to the lessee *until the option declared by him belong to the heir*, and from the time of that option the lessee is entitled to them, and must be charged with interest upon his purchase-money, which money and interest are personal estate of the testator and go to his next-of-kin."

From the judgments themselves then it would seem that the estate was not converted as from the date of the lease, but only from the date of option exercised, which was subsequent to the testator's death; and so the estate having been enjoyed by the testator as realty during his life, would appear, on the authority of *Matson* v. *Swift*, and *Custance* v. *Bradshaw*, not to have been liable to probate duty.

There is clearly a conflict of authority on the

point; but it is submitted that, seeing that the remarks of Malins, V.C., in *Lord* v. *Colvin*, were not necessary for the decision in that case, they are only *obiter dicta*, and an extra-judicial expression of opinion, and ought not therefore to override the decision in *Matson* v. *Swift*, and *Custance* v. *Bradshaw*, which has received the express approval of the House of Lords in *Attorney-General* v. *Brunning*, and of the present L. J. James, in *Forbes* v. *Steven*, L. R. 10 Eq. 178.

NOTE II.

In what cases Debts due to Deceased are liable to Duty.

The question as to what debts due to deceased persons are liable to probate duty is one of considerable difficulty, chiefly because it has hardly ever been brought before the courts, and has therefore not attracted the attention of text-book writers. As it is greatly complicated by the distinction between simple contract and specialty debts, it will be well to discuss the two classes separately.

1. And, first, as to simple contract debts. With regard to these, the question really to be solved is: Is this debt recoverable here by the executor? or rather, if the words of Section XI. defended in the last note are correct, was it recoverable here at the time of the testator's death?

A preliminary difficulty as to whether it is the domicile of the creditor or the debtor, which in the first and simplest instance decides the question of

liability to duty, may be put aside. The case of *Attorney-General* v. *Hope* has practically solved that difficulty. This was an appeal to the House of Lords from the Court of Exchequer, and is best reported in 1 Cr. M. & R. 550. The question was whether duty was payable on property belonging to a testator who died *domiciled and resident in England*, such property consisting of (*a*) stocks of the United States and of the State of New York, which stocks are only transferable in America; (*b*) of simple contract debts due from debtors resident and domiciled in America. Lord Brougham held that duty was not payable, and so decided that the local situation of the property for purposes of probate did not depend on the *creditor's* domicile. The same case settles the question: Does the liability to duty depend on the domicile or on the residence of the *debtor?* Mr. Hanson says (p. 159), simple contract debts are locally situate where the debtor is *resident* at the time of testator's death; and that is, no doubt, the true rule. Though not settled, or indeed raised, in *Attorney-General* v. *Hope*, it was practically assumed, for during the argument (p. 551) Lord Brougham said: "I have always considered that personal estate follows the domicile of the owner, *i.e.* as to probate," to which Rolfe replied: "Not in all cases; thus, if A. die in the diocese of Norwich, and his debtor is resident in another diocese, probate must be granted in the latter;" and that statement was

apparently acquiesced in by Lord Brougham. The rule so laid down is in accordance with the whole law and practice of the Ecclesiastical Courts, and may therefore be considered as settled.

But then this further question arises, and herein lies the difficulty. It is laid down in *Attorney-General* v. *Hope*, and *Attorney-General* v. *Brunning*, that the test of liability to duty is: Is the property recoverable here? Now, certain debts would be recoverable here even when the debtor is not resident in this country. In fact, this is the case whenever there are assets of the debtor here which can be taken in execution to satisfy the amount of a judgment against him. On the general rule, therefore, whenever a debtor has, at the time of the testator's death, property in this country which can be taken in execution (whether the debtor be or be not resident in this country), duty is payable on all debts owing from him. If, then, the less general rule as to the residence of the debtor is not to override the more general, and indeed fundamental, rule as to the recoverability of the property, such debts ought to pay duty. How important a question this may be to the revenue is obvious, when it is considered how many merchants die whose debtors, though resident abroad, have real or personal property in this country.

2. In considering specialty debts, still another element of complication comes in, for it was the rule in the practice of the Ecclesiastical Courts that

specialty debts were *bona notabilia* of the deceased where the instrument was at the time of his death, so that if it were abroad it would escape probate duty altogether. Though this rule ceased to be of much practical consequence in England when the Court of Probate was established, and has been altered by statute (25 & 26 Vict. c. 22, s. 39), as regards debts due from persons resident in the United Kingdom, yet there is no reason in the nature of things why it should not apply, and (if not specifically abolished) ought to and does apply, as between the United Kingdom and foreign nations, as regards debts due from persons resident abroad. Moreover, on testing it by the general rule, Is the debt recoverable here? this special rule would seem to be founded on good reason, as, to recover on an instrument, the instrument must be produced in court, and it cannot be produced if not in this country. The case is really much the same as that of foreign bonds passing by delivery, which, if situate here at the time of death, pay duty, though the debtor on such bonds can only be sued abroad.

It is, indeed, stated by Mr. Hanson (p. 159), *à propos* of the case of *Attorney-General* v. *Hope*, *sup.*, after laying it down, as we have seen, that the test of the liability to duty of a simple contract debt is the residence of the debtor at the time of the testator's death, that "the same rule must apply to specialty debts due from foreigners, not-

withstanding that the security may be in this country, for it is obvious that the only mode of recovering such debts is by process in a foreign court." Now, we have seen that the rule must probably be modified as to simple contract debts, but it must certainly be modified as to specialty debts. It is, for instance, so far from "obvious" that "the only mode of recovering such debts is by process in a foreign court," that it is certain that a mortgage of property belonging to a foreigner in this country may be foreclosed simply by bringing an action for foreclosure in the Court of Chancery. Since the Judicature Acts, 1873 and 1875, with their numerous provisions for substituted service, service out of the jurisdiction, and notice in lieu of service, this power of suing a foreigner who has property in this country has become more extensive.

As then the question has never really been decided, until it is decided in a contrary sense it may be laid down that the liability of specialty debts due from persons abroad will depend on two considerations: (1) Where is the residence of the debtor at the time of the testator's death? (2) What is the local situation of the instrument at such time? and that if the answer to both questions is, In the United Kingdom, duty will be payable; but if the answer to *either* question is, Abroad, then duty will not be payable.

NOTE III.

In what cases Partnership Property is liable to Duty.

The question as to the liability of partnership property to duty in certain cases is one of considerable perplexity. It involves in part the same difficulties as those stated in the preceding note, as to whether, if a debtor has property in this country, he is suable here in a sense that will make the debt for probate purposes situate here, as being recoverable and capable of being dealt with in this country. The difficulty and perhaps the solution will more clearly appear by tabulating the possible cases in which it can arise.

But first it is well to premise that the difficulty arises from the doctrine of partnership which gives to a deceased partner, not a share of the property of the partnership, but a right to call the surviving partners to account for a share of the surplus remaining after payment of all the debts and liabilities of the partnership, and the sale of its property (if necessary) for that purpose; and the doctrine that such property is converted into personal estate, which vests in the surviving partners and not in the personal representative of a deceased partner, except in the case of ordinary goods and chattels (as distinct from chattels real and *choses in action*) which vest in the surviving partners and the legal personal representatives of a deceased partner jointly, according to *Buckley* v. *Barber*, 6 Exch. 164.

The difficulty then is: Are we simply to regard

the place where the surviving partners reside at the time of the death of the deceased partner, they being the persons suable, and if so, whether one partner residing within the jurisdiction is enough to determine the question; or are we also to regard, at least in the case of chattels, the local situation of the property? This must be considered if any weight is to be attached to the consideration given to the nature of the property in *Custance* v. *Bradshaw*, where it was held that though, as between the representatives of the deceased, land might be personalty, yet the Crown for revenue purposes was not entitled to consider it as personalty; by analogy it may be argued that though between the partners the local situation is of no moment, yet as regards the Crown it is the one important point.

To take the various cases of partnership possessing property, or having representatives carrying on business both within the United Kingdom and abroad:

(I) A partnership carrying on business only in the United Kingdom, but having property (*a*) situate in the United Kingdom and also (*b*) abroad:

(II) A partnership carrying on business only abroad, but having property (*a*) in the United Kingdom as well as (*b*) abroad.

(III) A partnership having partners carrying on business both in the United Kingdom and abroad.

I. (*a*) As to the property in the United Kingdom there is no difficulty. Being personalty, or so far as being realty it is converted into personalty, it pays probate duty.

b. As to property abroad, it is clear that all property which vests in the surviving partners, so that the representatives of a deceased partner can only recover by suing the survivors, pays duty ; because being recoverable here, and probably here only, it is by our fundamental rule liable to probate duty.

But as to chattels, which, according to *Buckley* v. *Barber*, *sup.*, vest in the survivors jointly with the representatives of deceased, the latter can sue and recover them in their own names and without the survivors ; that is, they could recover them abroad without coming to the courts of this country at all. If so, ought not the real nature of the title to be considered, as in *Custance* v. *Bradshaw*, and the local situation of the property being looked at, such chattels to be held exempt from duty ?

II. As to a foreign partnership having property in the United Kingdom, are the chattels belonging to the partnership (for there can be no question as to the realty and *choses in action* being exempt) situate in the United Kingdom to be regarded as belonging to the surviving partners, so that the deceased partner's representatives have only a right to sue the other or surviving partners where they reside, *i.e.* abroad ; or is the local situation of the property to be looked at, and the representative of

the deceased partner allowed to come here to make title to the property, and, if so, of course, to pay duty? On the whole, in this case it would seem that the local situation of the effects must be looked at, as our courts will not determine the question as to the rights of foreign partnerships *inter se*, and consequently such chattels will pay duty.

(*b*) The property of a foreign partnership situate abroad of course pays no duty here.

III. As to partnerships carrying on business both in the United Kingdom and abroad.

The present practice of the Probate Duty Office is to inquire where the head office is, and if that is situate in the United Kingdom, to demand payment of probate duty on all the property of the partnership wherever situate; if not, not. It is submitted that this practice is not well founded. In the first place, it treats a partnership on the same footing as a limited company, which is a kind of corporation, and might therefore reasonably be held to have but one domicile; though even as to companies, it is doubtful whether, if a company have any office in the United Kingdom, its shares are not liable to probate duty. (*See* note to illustrations *D.* vii. to section 10.) The case of partnerships is very different, because in the case of a company the corporation is all important, the individuals composing it comparatively unimportant; whereas partners never lose their individuality in that of the firm, and the firm is unimportant, the

individuals composing it all important. The very method adopted in suing the one or the other shows the existence of this all-essential difference. In the one case the corporation is sued, in the other the individuals. It is true that under the Judicature Acts,[1] a firm may sue and be sued as such, but if plaintiff, the firm may be compelled to disclose the partners, and if defendant, the partners must appear in their own names; clearly showing the primary importance of the individuals separately, and the secondary character of the firm as a whole. In the second place, the liability of property to probate duty depends not on the domicile of the owner of the property or debtor, which is all that can be settled by taking the situation of the head office into account, but either on the actual local situation of the property or of its capability of being dealt with here. It is plain, therefore, that a question of liability is at once raised if any of the partners reside, or has partnership property, in the United Kingdom. This last case is by far the most important, and the way in which it is decided might make a considerable difference to the revenue one way or the other.

A further subdivision is here necessary to settle the case of :

(1) When the surviving partners, or (as I submit) any of them, reside in the United Kingdom.

[1] Ord. vii. r. 2; ix. rr. 6, 6A; xvi. rr. 10, 10A.

(2) When they, or any of them, reside abroad.

1. In the first case, the solution will be the same as in Case I. (*See* p. 51.)

2. In the second case, there is considerable doubt whether the duty is payable on property situate here. If the laws of the foreign country with regard to partnership property are the same as ours with regard to partnership, it would seem that duty would not be payable in regard of the property vesting in the survivors, on the ground that they can only be sued abroad, but would be payable on chattels which do not so vest, since the representatives of the deceased partner can deal with them here. If the laws of the foreign country are not the same as ours, the matter may be further complicated by the doubt whether the partnership is constituted according to English or foreign law. If by the latter, then the liability to duty of the partnership property here will depend on whether it vests, and if so, what parts thereof, in the survivor solely. All not so vesting which is personalty would pay duty.

A further difficulty might be raised as to a return of debts in respect of partnership property, and whether it would be allowable to put the whole debts of the partnership on such part of its property as would be liable to duty, or only a proportionate part of such debts.

On the whole, however, it seems that the

most satisfactory solution of all these difficulties would be to hold that the residence of the surviving partners should be the test. The sole claims of the deceased being a share of the surplus property of the partnership after payment of all debts of the partnership, which can only be recovered from the rest or surviving partners, the duty should be paid on that footing. If the surviving partners, or any of them, reside in the United Kingdom, then duty would be payable on the share of the deceased in the net value of the partnership property, of whatever kind and wherever situate.

Whether this would be the conclusion a court or the Legislature would come to it is impossible to guess, but it would at least make the whole probate duty law logical, consistent, and comprehensible, and the question needs to be settled one way or the other.

APPENDIX B.

CONTAINING

STATUTORY PROVISIONS RELATING TO PROBATE DUTY.

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55 GEO. 3, c. 184 (PROBATE DUTY ACT).

SECT. 2. And be it further enacted, that there shall be raised, levied, and paid unto and for the use of his Majesty, his heirs and successors, in and throughout the whole of Great Britain, for and in respect of the several instruments, matters, and things mentioned and described in the schedule hereunto annexed (except those standing under the head of exemptions), or for or in respect of the vellum, parchment, or paper upon which such instruments, matters, and things, or any of them, shall be written or printed, the several duties or sums of money set down in figures against the same respectively, or otherwise specified and set forth in the same schedule; and that duties therein mentioned shall commence and take place from and after the thirty-first day of August, one thousand eight hundred and fifteen; and that the said schedule, and all the provisions, regulations, and directions therein contained with respect to the said duties, and the instruments, matters, and things charged therewith, shall be deemed and taken to be part of this Act, and shall be read and construed as if the same had been asserted herein at this place, and shall be applied, observed, and put in execution accordingly.

Sect. 37. And for better securing the duties on probates of wills and letters of administration, be it further enacted, that from and after the thirty-first day of August, one thousand eight

hundred and fifteen, if any person shall take possession of, and in any manner administer, any part of the personal estate and effects of any person deceased, without obtaining probate of the will or letters of administration of the estate and effects of the deceased within six calendar months after his or her decease, or within two calendar months after the termination of any suit or dispute respecting the will or the right to letters of administration, if there shall be any such, which shall not be ended within four calendar months after the death of the deceased, every person so offending shall forfeit the sum of one hundred pounds, and also a further sum, at and after the rate of ten pounds per centum, on the amount of the stamp duty payable on the probate of the will or letters of administration of the estate and effects of the deceased.

Sect. 38. And be it further enacted, that from and after the expiration of three calendar months from the passing of this Act, no Ecclesiastical Court or person shall grant probate of the will or letters of administration of the estate and effects of any person deceased, without first requiring and receiving from the person or persons applying for the probate or letters of administration, or from some other competent person or persons, an affidavit, or solemn affirmation in the case of Quakers, that the estate and effects of the deceased for or in respect of which the probate or letters of administration is or are to be granted, exclusive of what the deceased shall have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially, but including the leasehold estates for years of the deceased, whether absolute or determinable on lives, if any, and without deducting anything on account of the debts due and owing from the deceased, are under the value of a certain sum to be therein specified, to the best of the deponent's or affirmant's knowledge, information, and belief, in order that the proper and full stamp duty may be paid on such probate or letters of administration; which affidavit or affirmation shall be made before the surrogate or other person who shall administer the usual oath for the due administration of the estate and effects of the deceased.

Sect. 39. And be it further enacted, that every such affidavit or affirmation shall be exempt from stamp duty, and shall be

transmitted to the said Commissioners of Stamps, together with a copy of the will or extract or account of the letters of administration to which it shall relate, by the registrar or other officer of the court whose duty it shall be to transmit copies of wills and extracts or accounts of letters of administration to the said Commissioners, for the better collection of the duties on legacies and successions to personal estate upon intestacy; and if any registrar or other officer whose duty it shall be shall neglect to transmit such affidavit or affirmation to the said Commissioners of Stamps as hereby directed, every person so offending shall forfeit the sum of fifty pounds.

Sect. 40. And be it further enacted, that from and after the passing of this Act, where any person on applying for the probate of a will or letters of administration shall have estimated the estate and effects of the deceased to be of greater value than the same shall have afterwards proved to be, and shall in consequence have paid too high a stamp duty thereon, if such person shall produce the probate or letters of administration to the said Commissioners of Stamps within six calendar months after the true value of the estate and effects of the deceased shall have been ascertained, and it shall be discovered that too high a duty was first paid on the probate or letters of administration, and shall deliver to them a particular inventory and account and valuation of the estate and effects of the deceased, verified by an affidavit, or solemn affirmation in the case of Quakers; and if it should thereupon satisfactorily appear to the said Commissioners that a greater stamp duty was paid on the probate or letters of administration than the law required, it shall be lawful for the said Commissioners to cancel and expunge the stamp on the probate or letters of administration, and to substitute another stamp for denoting the duty which ought to have been paid thereon, and to make an allowance for the difference between them, as in the cases of spoiled stamps, or, if the difference be considerable, to repay the same in money, at the discretion of the said Commissioners.

Sect. 41. And be it further enacted, that from and after the passing of this Act, where any person, on applying for the probate of a will or letters of administration, shall have estimated the estate and effects of the deceased to be of less

value than the same shall have afterwards proved to be, and shall in consequence have paid too little stamp duty thereon, it shall be lawful for the said Commissioners of Stamps, on delivery to them of an affidavit or solemn affirmation of the value of the estate and effects of the deceased, to cause the probate or letters of administration to be duly stamped, on payment of the full duty which ought to have been originally paid thereon in respect of such value, and of the further sum or penalty payable by law for stamping deeds after the execution thereof, without any deduction or allowance of the stamp duty originally paid on such probate or letters of administration: Provided always, that if the application shall be made within six calendar months after the true value of the estate and effects of the deceased shall be ascertained, and it shall be discovered that too little duty was at first paid on the probate or letters of administration, and if it shall appear by affidavit or solemn affirmation to the satisfaction of the said Commissioners that such duty was paid in consequence of any mistake or misapprehension, or of its not being known at the time that some particular part of the estate and effects belonged to the deceased, and without any intention of fraud or to delay the payment of the full and proper duty, then it shall be lawful for the said Commissioners to remit the before-mentioned penalty, and to cause the probate or letters of administration to be duly stamped, on payment only of the sum which shall be wanting to make up the duty which ought to have been at first paid thereon.

Sect. 42. Provided always, and be it further enacted, that in cases of letters of administration on which too little stamp duty shall have been paid at first, the said Commissioners of Stamps shall not cause the same to be duly stamped in the manner aforesaid until the administrator shall have given such security to the Ecclesiastical Court or ordinary by whom the letters of administration shall have been granted as ought by law to have been given on the granting thereof, in case the full value of the estate and effects of the deceased had been then ascertained, and also that the said Commissioners of Stamps shall yearly or oftener transmit an account of the probates and letters of administration upon which the stamps shall have been

rectified, in pursuance of this Act, to the several Ecclesiastical Courts by which the same shall have been granted, together with the value of the estate and effects of the deceased upon which such rectification shall have proceeded.

Sect. 43. And be it further enacted, that where too little duty shall have been paid on any probate or letters of administration in consequence of any mistake or misapprehension, or of its not being known at the time that some particular part of the estate and effects belonged to the deceased, if any executor or administrator acting under such probate or letters of administration shall not, within six calendar months after the passing of this Act, or after the discovery of the mistake or misapprehension, or of any estate or effects not known at the time to have belonged to the deceased, apply to the said Commissioners of Stamps, and pay what shall be wanting to make up the duty which ought to have been paid at first on such probate or letters of administration, he or she shall forfeit the sum of one hundred pounds, and also a further sum, at and after the rate of ten pounds per centum, on the amount of the sum wanting to make up the proper duty.

Sect. 44. And be it further enacted, that from and after the expiration of three calendar months from the passing of this Act, it shall not be lawful for any Ecclesiastical Court or person to call in and revoke or to accept the surrender of any probate or letters of administration, on the ground only of too high or too low a stamp duty having been paid thereon, as heretofore hath been practised; and if any Ecclesiastical Court or person shall so do, the Commissioners of Stamps shall not make any allowance whatever for the stamp duty on the probate or letters of administration which shall be so annulled.

Sect. 45. And whereas it has happened in the case of letters of administration on which the proper stamp duty hath not been paid at first, that certain debts, chattels real, or other effects due or belonging to the deceased have been found to be of such great value that the administrator hath not been possessed of money sufficient, either of his own or of the deceased, to pay the requisite stamp duty, in order to render such letters of administration available for the recovery thereof by law: And whereas the like may occur again, and

it may also happen that executors or persons entitled to take out letters of administration may, before obtaining probate of the will or letters of administration of the estate and effects of the deceased, find some considerable part or parts of the estate and effects of the deceased so circumstanced as not to be immediately got possession of, and may not have money sufficient, either of their own or of the deceased, to pay the stamp duty on the probate or letters of administration which it shall be necessary to obtain: Be it therefore further enacted, that from and after the passing of this Act it shall be lawful for the said Commissioners of Stamps, on satisfactory proof of the facts by affidavit or solemn affirmation in any such case as aforesaid, which may appear to them to require relief, to cause the probate or letters of administration to be duly stamped for denoting the duty payable, or which ought originally to have been paid thereon, and to give credit for the duty, either upon payment of the before-mentioned penalty, or without, in case of probates or letters of administration already obtained, and upon which too little duty shall have been paid, and either with or without allowance of the stamp duty already paid thereon, as the case may require, under the provisions of this Act; provided in all such cases of credit that security be first given by the executors or administrators, together with two or more sufficient sureties to be approved of by the said Commissioners, by a bond to his Majesty, his heirs or successors, in double the amount of the duty, for the due and full payment of the sum for which credit shall be given, within six calendar months or any less period, and of the interest for the same at the rate of ten pounds per centum per annum from the expiration of such period until payment thereof, in case of any default of payment at the time appointed; and such probate or letters of administration, being duly stamped in the manner aforesaid, shall be as valid and available as if the proper duty had been at first paid thereon, and the same had been stamped accordingly.

Sect. 46. Provided always, and be it further enacted, that if, at the expiration of the time to be allowed for the payment of the duty on such probate or letters of administration, it shall appear to the satisfaction of the said Commissioners that the

executor or administrator to whom such credit shall be given as aforesaid shall not have recovered effects of the deceased to an amount sufficient for the payment of the duty, it shall be lawful for the said Commissioners to give such further time for the payment thereof, and upon such terms and conditions, as they shall think expedient.

Sect. 47. Provided also, and be it further enacted, that the probate or letters of administration so to be stamped on credit as aforesaid shall be deposited with the said Commissioners of Stamps, and shall not be delivered up to the executor or administrator until payment of the duty, together with such interest as aforesaid, if any, shall become due; but the same shall nevertheless be produced in evidence by some officer of the Commissioners of Stamps, at the expense of the executor or administrator, as occasion shall require.

Sect. 48. And be it further enacted, that the duty for which credit shall be given as aforesaid shall be a debt to his Majesty, his heirs or successors, from the personal estate of the deceased, and shall be paid in preference to and before any other debt whatsoever due from the same estate; and if any executor or administrator of the estate of the deceased shall pay any other debt in preference thereto, he or she shall not only be charged with and be liable to pay the duty out of his or her own estate, but shall also forfeit the sum of five hundred pounds.

Sect. 49. And be it further enacted, that if, before payment of the duty for which credit shall be given in any such case as aforesaid, it shall become necessary to take out letters of administration *de bonis non* of the deceased, it shall also be lawful for the said Commissioners to cause such letters of administration *de bonis non* to be duly stamped with the particular stamp provided to be used on letters of administration of that kind, for denoting the payment of the duty in respect of the effects of the deceased on some prior probate or letters of administration of the same effects, in such and the same manner as if the duty had been actually paid, upon having the letters of administration *de bonis non* deposited with the said Commissioners, and upon having such further security for the payment of the duty as they shall think expedient; and such letters of

administration shall be as valid and available as if the duty for which credit shall be given had been paid.

Sect. 50. And be it further enacted, in regard to probate of wills and letters of administration, that where any part of the personal estate which the deceased was possessed of or entitled to shall be alleged to have been trust property, if the person or persons who shall be required to make any affidavit or affirmation relating thereto, conformably to the provisions of the said Act of the forty-eighth year of his Majesty's reign, shall reside out of England, such affidavit or affirmation shall and may be made before any person duly commissioned to take affidavits by the Court of Session or Court of Exchequer in Scotland, or before one of his Majesty's justices of the peace in Scotland, or before a Master in Chancery, ordinary or extraordinary, in Ireland, or before any judge or civil magistrate of any other country or place where the party or parties shall happen to reside; and every such affidavit or affirmation shall be as effectual as if the same had been made before a Master in Chancery in England, pursuant to the directions of the said last-mentioned Act.

Sect. 52. And be it further enacted, that all affidavits, and solemn affirmations in the case of Quakers, required by this or any former or future Act of Parliament, or which shall be required by the said Commissioners of Stamps to be made, for the satisfaction of the said Commissioners, of and concerning any facts or circumstances upon which they are to execute the powers vested in them by this or any other Act, or for the verification of any accounts of or concerning the duties under their management, or for any other purpose relating to such duties, shall, in all cases not otherwise expressly provided for, be made before the said Commissioners, or any one or more of them, or before a Master in Chancery, ordinary or extraordinary, in England, or before any person duly commissioned to take affidavits by the Court of Session, or the Court of Exchequer in Scotland, or before one of his Majesty's justices of the peace in Scotland.

Sect. 53. And be it further enacted, that all and every person or persons before whom any affidavit or solemn affirmation is or shall be required or directed to be made by this or any former

or future Act of Parliament relating to any stamp duties, shall be and they are hereby authorised to take the same, and administer the proper oath or affirmation for that purpose; and if any person making any such affidavit or affirmation shall knowingly and willingly make a false oath or affirmation of or concerning any of the matters to be therein specified and set forth, every person so offending, and being thereof lawfully convicted, shall be subject and liable to such pains and penalties as by any law now in force persons convicted of wilful and corrupt perjury are subject and liable to.

39 & 40 GEO. 3, c. 72.

Providing for return of Probate Duty paid twice over.

Sect. 16. And whereas it is expedient that the said Commissioners of Stamps should be empowered to allow to any person or persons who shall have taken out any probates of any will or letters of administration through any inadvertence or mistake in any Ecclesiastical Court or Courts the full value in other stamped vellum, parchment, or paper of the amount of the stamp duty on any of such probates or letters of administration that shall have been rendered wholly useless and of no effect whatever, so as that no person or persons shall pay the stamp duty granted upon probates of wills or letters of administration by any Act or Acts now in force more than once upon any one will or on the same property of any person dying intestate: Be it therefore enacted, that when due proof on oath shall be made to such Commissioners of Stamps to the satisfaction of the said Commissioners (which oath the said Commissioners or any one of them is hereby authorised to administer) that any will hath, through any inadvertence or mistake, been proved, or that any letters of administration have been taken out on the same property in more than one Ecclesiastical or Prerogative Court, or more than once in any such Ecclesiastical Court, and that by reason thereof more than one stamp duty shall have been paid thereupon, then and in every such case it shall be lawful for

such Commissioners, and they are hereby authorised upon delivery to them of any such useless probate or letters of administration as aforesaid to be cancelled, and on production of the valid probate or letters of administration that shall have been granted on any such will or property as aforesaid, to cancel such useless probate or letters of administration, and to stamp or mark or cause to be stamped or marked or deliver any vellum, parchment, or paper stamped with stamps of the like denomination and value with the amount of any such probate or probates or letters of administration, without demanding or taking directly or indirectly for the same any sum of money or other consideration whatsoever.

41 GEO. 3, c. 86.

Exempting double grants of Probate, &c., from Duty.

Sect. 3. And whereas it is expedient that the duties payable in respect of probates or letters of administration should not be paid more than once on the same estate, Be it therefore enacted that it shall be lawful for the said Commissioners of Stamps, and they are hereby authorised and required to provide a stamp or mark, distinguishable from all other stamps or marks used in relation to any stamp duties, for the purpose of stamping or marking any piece of vellum, parchment, or paper whereon any probate of any will or letters of administration shall be engrossed, printed, or written in relation to any estate in respect whereof any probate or letters of administration shall have been before taken out, and the full amount of the duties payable thereon by any Act or Acts of Parliament then in force, according to the full value of such estate, shall have been duly paid and discharged, and in every case where any probate or probates or letters of administration shall have been taken out, duly stamped according to the full value of the estate in respect whereof the same shall have been granted, then, and in such case, any further or other probate or letters of administration aforesaid, which shall be at any time thereafter applied for in

respect of such estate, shall and may be issued and granted upon any piece of vellum, parchment, or paper stamped or marked with the stamp provided by the said Commissioners by virtue of this Act for such other probates or letters of administration as aforesaid, and every such other probate or letters of administration which shall be duly stamped or marked with such stamp or mark as last aforesaid, shall be as available in the law and of the like force and effect in all respects whatever as if the vellum, parchment, or paper whereon the same shall be engrossed, printed, or written had been duly stamped with the stamp or mark denoting the full amount of the duties payable in respect of the probate or letters of administration taken out on the full value of such estate, anything in any Act or Acts or this Act before contained to the contrary thereof in anywise notwithstanding.

48 GEO. 3, c. 149.

Making Probates, &c. valid as to Trust Property without Stamp, and transferring the Probate Duty in Scotland from the Testament to the Inventory of the Property.

Sect. 35. From and after the passing of this Act, the probate of the will of any person deceased or the letters of administration of the effects of any person deceased heretofore granted, or to be hereafter granted either before or upon or after the tenth day of October, one thousand eight hundred and eight, shall be deemed and taken to be valid and available by the executors or administrators of the deceased for recovering, transferring, or assigning any debt or debts or other personal estate or effects whereof or whereto the deceased was possessed or entitled either wholly or partially as a trustee, notwithstanding the amount or value of such debt or debts or other personal estate or effects or the amount or value of so much thereof or such interest therein as was trust property in the deceased (as the case may be) shall not be included in the amount or value of the estate in respect of which the stamp duty was paid on such probate or letters of administration.

Sect. 36. Where the executors or administrators of any person deceased shall be desirous of transferring or of receiving the dividends of any share standing in the name of the deceased of and in any of the Government or parliamentary stocks or funds transferable at the Bank of England, or of and in the stock and funds of the Governor and Company of the Bank of England, or of and in the stock and funds of any other company, corporation, or society whatsoever, passing by transfer in the books of such company, corporation, or society, under and by virtue of any such probate or letters of administration as aforesaid, and shall allege that the deceased was possessed thereof or entitled thereto either wholly or partially as a trustee, it shall be lawful for the said Governor and Company of the Bank of England and for any such other company, corporation, or society as aforesaid or their respective officers, for their indemnity and protection, to require such affidavit or affirmation of the fact as hereinafter is mentioned if the fact shall not otherwise satisfactorily appear, and thereupon to permit such executors or administrators to transfer the stock or fund in question or receive dividends thereof without regard to the amount of the stamp duty on the probate of the will of the deceased or the letters of administration of his or her effects; and where the executors or administrators of any person deceased shall have occasion to recover any debt or debts or other personal effects due, apparently belonging to the deceased, and shall allege that the deceased was possessed thereof or entitled thereto either wholly or partially as a trustee, it shall be lawful for the person or persons liable to pay or to deliver such debt or debts or other effects to require such affidavit or affirmation of the fact as hereinafter is mentioned if the fact shall not otherwise satisfactorily appear, and thereupon to pay or deliver or make over the debt or debts or other effects in question to such executors or administrators or as they shall direct, without regard to the amount of the stamp duty on the probate of the will of the deceased or the letters of administration of his or her effects; and where the executors or administrators of any person deceased shall have occasion to assign or transfer any debt or debts due to the deceased or any chattels real or other personal effects whereof or whereto the deceased was possessed or entitled, and

shall allege that the same respectively was or were due to or vested in the deceased either wholly or partially as a trustee, it shall be lawful for the person or persons to whom or for whose use such debt or debts, chattels, real or other personal effects shall be proposed to be assigned or transferred to require such affidavit or affirmation of the fact as hereinafter is mentioned if the fact shall not otherwise satisfactorily appear, and thereupon to accept the proposed assignment or transfer without regard to the amount of the stamp duty on the probate of the will of the deceased or the letters of administration of his or her effects.

Sect. 37. Upon any such requisition as aforesaid, the executor or executors, administrator or administrators of the deceased, or some other person or persons to whom the facts shall be known, shall make a special affidavit or affirmation of the facts and circumstances of the case, stating the property in question, and that the deceased had not any beneficial interest whatever in the same or no other beneficial interest therein than shall be particularly mentioned and set forth (as the case may be), but was possessed thereof or entitled thereto either wholly or in part (as the case may be) in trust for some other person or persons whose name or names or other sufficient description shall be specified in such affidavit or affirmation, or for such purpose as shall be specified therein, and that the beneficial interest of the deceased, if any, in the property in question doth not exceed a certain value, to be therein also specified according to the best estimate that can be made thereof if reversionary or contingent, and that the amount or value of the estate for which the stamp duty was paid on the probate of the will of the deceased or on the letters of administration of his or her effects is sufficient to include or cover such beneficial interest of the deceased, as well as the rest of the personal estate whereof or whereto the deceased was beneficially possessed or entitled, and for which such probate or letters of administration shall have been granted, as far as the same have come to the knowledge of such executor or executors, administrator or administrators; and where the affidavit or affirmation of the facts and circumstances of the trusts shall be made by any other person than the executor or executors, administrator or administrators of the deceased, such executor or executors, administrator

or administrators shall make affidavit or affirmation that the same are true to the best of his, her, or their knowledge, and that the property in question is intended to be applied and disposed of accordingly, which affidavit or affirmation shall be sworn or made before a Master in Chancery, ordinary or extraordinary (who is hereby authorised to take the same and administer the proper oath or affirmation for the purpose), and shall be delivered to the party or parties requiring the same, and shall be sufficient to indemnify and protect the party or parties acting upon the faith thereof; and if any person or persons making any such affidavit or affirmation as aforesaid shall knowingly and wilfully make a false oath or affirmation of or concerning any of the matters to be therein specified and set forth, every person so offending and being thereof lawfully convicted shall be subject and liable to such pains and penalties as by any law now in force persons convicted of wilful and corrupt perjury are subject and liable to.

Sect. 38. All and every person or persons who, as executor or executors, nearest in kin, creditor or creditors, or otherwise, shall intromit with or enter upon the possession or management of any personal or movable estate or effects in Scotland of any person dying after the tenth day of October, one thousand eight hundred and eight, shall, on or before disposing of or distributing any part of such estate or effects, or uplifting any debt due to the deceased, and at all events within six calendar months next after having assumed such possession or management in whole or in part, and before any such person or persons shall be confirmed executor or executors, testamentary or dative, exhibit upon oath or solemn affirmation in the proper Commissary Court in Scotland (which oath or affirmation any judge of or Commissioner appointed by such court is hereby authorised to administer, and which oath or affirmation shall be not chargeable with any stamp duty), a full and true inventory duly stamped, as required by the Act, of all the personal or movable estate and the effects of the deceased already recovered or known to be existing, distinguishing what shall be situated in Scotland and what elsewhere, together with any testament or other writing relating to the disposal of such estate and effects or any part thereof which the person or persons

exhibiting such inventory shall have in his, her, or their custody or power, which said inventory together with such testament or other writing (if any such there be) shall be recorded in the books of the said court without any other expense to the party than the ordinary fees of registration, and if at any subsequent period a discovery shall be made of any other effects belonging to the deceased, an additional inventory or additional inventories of the same shall within two calendar months of the discovery thereof be in like manner exhibited upon oath or solemn affirmation by any person or persons intromitting with or assuming the management of such effects, which additional inventory or inventories shall also be recorded in the manner aforesaid. And in case any person or persons hereby required to exhibit any such inventory or inventories as aforesaid shall refuse or neglect so to do within the time prescribed for that purpose, or shall knowingly omit any part of the estate or effects of the deceased therein, he, she, or they shall for every such offence forfeit the sum of twenty pounds, to be recovered by ordinary action or summary complaint in the Sheriff, Stewart, or Borough Court, or before any justice of the peace of the shire, stewartry, or borough where the person or persons sued or complained of shall reside, which court of justice shall have power if there shall appear cause to mitigate such penalty, so that the same be not reduced below one moiety thereof, besides costs of suit, and the person or persons so offending shall also be charged and chargeable with, and be holden liable to the payment of double the amount of the stamp duty which would have been payable upon such inventory or inventories so neglected to be exhibited according to the amount of value of the estate and effects which ought to have been specified therein, or double the amount of the further or increased stamp duty which would have been payable upon such inventory or inventories exhibited in respect of the estate or effects so omitted therein as aforesaid, as the case may require, which double duty shall be deemed and taken to be a debt to his Majesty, his heirs and successors, of the person or persons liable to pay the same, and shall and may be sued for and recovered accordingly.

Sect. 39. All and every the inventory or inventories so to be exhibited and recorded as aforesaid shall be returned by the

Clerk of the Commissary Court wherein the same shall be exhibited, and shall be transmitted by him from time to time as often as required, together with the said oath or affirmation relating thereto, to the Solicitor of Stamp Duties at Edinburgh, who shall file and preserve the same in the Stamp Office there, and if the clerk of any such court shall fail to record, retain, or transmit any such inventory which shall be exhibited there to be recorded as aforesaid, or shall receive and record any such inventory which shall not be duly stamped as the law requires, he shall for every such offence forfeit the sum of fifty pounds.

Sect. 40. Where any such additional inventory shall be exhibited to be recorded as aforesaid, the same shall also specify the amount or value of the estate and effects of the same person comprised in any former inventory or inventories.

Sect. 42. It shall not be lawful for any Commissary Court in Scotland to grant confirmation of any testament, testamentary or dative, or eik thereto, of or for any estate or effects whatever, of any person dying after the tenth day of October, one thousand eight hundred and eight, unless the same shall be mentioned and included in some such inventory, exhibited and recorded as aforesaid; and it shall not be competent to any executor or executors, or other person or persons, to recover any debt or other effects, in Scotland, of or belonging to any person dying after the said tenth day of October, unless the same shall have been previously included in some such inventory exhibited and recorded as aforesaid; except the same respectively were vested in the deceased as a trustee for any other person or persons, and not beneficially; but these provisions are not in other respects to prejudice the law of Scotland regarding total or partial confirmations, or the rules of succession there established.

Sect. 43. And whereas many persons may through ignorance or inadvertence, or from accidental or unavoidable causes, have neglected to pay the duties heretofore payable in respect of legacies and of residues of personal estate given by wills or other testamentary instruments, or which have devolved to any person or persons upon intestacies, within the time prescribed by law for that purpose, and may have incurred heavy penalties by reason of such neglect: Be it further enacted, that if any person or persons who shall have incurred any penalty before the

passing of this Act, by reason of the non-payment of any such duty as aforesaid, shall offer to pay the same to the Commissioners of Stamps, at their head office in England or Scotland, as the case may require, on or before the thirty-first day of January, one thousand eight hundred and nine, and shall make it appear to the satisfaction of the said Commissioners that such duty was not paid within the time prescribed by law through ignorance or inadvertence or from any accidental or unavoidable cause, it shall be lawful for the said Commissioners to remit the penalty and to receive the duty which shall be due and payable by law, according to the circumstances of the case, and to cause a proper receipt to be given for such duty, and also to cause the receipt or discharge, if any, which shall have been given for the legacy or residue or share of residue of any personal estate in respect of which such duty shall be paid, to be duly stamped as the law requires for making the same available, and thereupon such receipt or discharge shall be as valid and available as if the same had been stamped and the duty paid within the time originally prescribed for that purpose, anything contained in any former Act or Acts to the contrary notwithstanding.

Sect. 44. In all cases not provided for by the preceding clause, where any receipt or discharge given for any legacy or for the residue or any share of the residue of any personal estate, which shall have been given by will or other testamentary instrument or have devolved to any person or persons upon intestacy, shall be brought to the head office to be stamped after the expiration of three calendar months from the date thereof, it shall be lawful for the said Commissioners to cause the same to be duly stamped, for making the same available on payment of the duty which shall be payable in respect thereof, together with the penalty incurred, in consequence of the same not having been brought to be stamped before the expiration of such three calendar months; and where any such receipt or discharge shall have been signed out of Great Britain, if the same shall be brought to be stamped within twenty-one days after its being received in Great Britain, it shall be lawful for the said Commissioners to remit any penalty that may have been incurred thereon, and to cause the same to be duly stamped, on payment

of the duty payable in respect thereof, anything contained in any former Act or Acts to the contrary notwithstanding.

5 & 6 VICT. c. 79 (5th August, 1842).

Transferring the power of extending time for making a return of Probate Duty from the Commissioners of the Treasury to the Commissioners of Stamps.

Sect. 23. And whereas by the said recited Act of the fifty-fifth year of the reign of King George the Third the Commissioners of the Treasury are authorised to allow time for making claims for a return of stamp duty paid upon probates of wills and letters of administration in cases where an executor or administrator hath paid debts out of the personal or movable estate of any deceased person, and it is expedient to authorise the Commissioners of Stamps and Taxes to allow time for making such claims, Be it therefore enacted that where it shall be proved by oath and proper vouchers, to the satisfaction of the said Commissioners of Stamps and Taxes, that an executor or administrator hath paid debts due and owing from the deceased and payable by law out of his or her personal or movable estate to such an amount as, being deducted from the amount or value of the estate and effects of the deceased for or in respect of which a probate or letters of administration shall have been granted in England after the thirty-first day of August, one thousand eight hundred and fifteen, or which shall be included in any inventory duly exhibited and recorded after that day in a Commissary Court in Scotland, shall reduce the same to a sum which, if it had been the whole gross amount or value of such estate or effects, would have occasioned a less stamp duty to be paid on such probate or letters of administration or inventory than shall have been actually paid thereon, it shall be lawful for the said Commissioners of Stamps and Taxes and they are hereby required to return the difference, provided the same shall be claimed within three years after the date of such probate or letters of administration, or the recording of such inventory as aforesaid; But when, by reason of any

proceeding at law or in equity, the debts due from the deceased shall have not been ascertained and paid or the effects of the deceased shall have not been recovered and made available, and in consequence thereof the executor or administrator shall be prevented from claiming such return of duty as aforesaid within the said term of three years, it shall be lawful for the said Commissioners of Stamps and Taxes to allow such further time for making the claim as may appear to them to be reasonable under the circumstances of the case.

16 & 17 VICT. c. 59 (4th August, 1853).

Charging additional Inventories with additional Duty only.

Sect. 8. And whereas by an Act passed in the forty-eighth year of the reign of King George the Third, chapter one hundred and forty-nine, section thirty-eight, persons intromitting with or entering upon the possession or management of any personal or movable estate or effects, in Scotland, of any person dying are required to exhibit a full and true inventory, duly stamped, to be recorded as in the said Act is provided, of all the personal or movable estate and effects of the deceased already recovered or known to be existing; and if at any subsequent period a discovery shall be made of any other effects belonging to the deceased, an additional inventory of the same is in like manner to be exhibited and recorded; and every such additional inventory is chargeable by law with the full *ad valorem* stamp duty payable in respect of the total amount or value of the estate and effects specified therein, and in any such former inventory; and thereupon the party exhibiting the same is entitled to receive back the amount of the stamp duty paid on such former inventory; and it is expedient to prevent the inconvenience attending the over-payment of the stamp duty in such cases by charging on any such additional inventory the deficient stamp duty only.

Every such additional inventory to be made and recorded as aforesaid shall be chargeable only with such amount of stamp duty as, together with the stamp duty charged upon any former

duly stamped inventory of the estate and effects of the same deceased person already exhibited and recorded, shall make up the full amount of stamp duty chargeable by law in respect of the total amount or value of all the estate and effects of the said deceased specified in the said additional and any such former inventory.

21 & 22 VICT. c. 56 (23rd July, 1858).

Extending over all parts of the United Kingdom the effect of Confirmation of Executors, and of Grants of Probate and Administration.

Sect. 9. From and after the date aforesaid (12th November, 1858) it shall be competent to include in the inventory of the personal estate and effects of any person who shall have died domiciled in Scotland any personal estate or effects of the deceased situated in England or in Ireland, or in both: Provided that the person applying for confirmation shall satisfy the commissary, and that the commissary shall by his interlocutor find that the deceased died domiciled in Scotland, which interlocutor shall be conclusive evidence of the fact of domicile: Provided also, that the value of such personal estate and effects situated in England or Ireland respectively shall be separately stated in such inventory, and such inventory shall be impressed with a stamp corresponding to the entire value of the estate and effects included therein, wheresoever situated within the United Kingdom.

Sect. 12. From and after the date aforesaid, when any confirmation of the executor of a person who shall in manner aforesaid be found to have died domiciled in Scotland, which includes, besides the personal estate situated in Scotland, also personal estate situated in England, shall be produced in the principal Court of Probate in England, and a copy thereof deposited with the registrar, together with a certified copy of the interlocutor of the commissary, finding that such deceased person died domiciled in Scotland, such confirmation shall be sealed with the seal of the said Court, and returned to the

person producing the same, and shall thereafter have the like force and effect in England as if a probate or letters of administration, as the case may be, had been granted by the said Court of Probate.

Sect. 13. From and after the date aforesaid, where any confirmation of the executor of a person who shall so be found to have died domiciled in Scotland, which includes, besides the personal estate situated in Scotland, also personal estate situated in Ireland, shall be produced in the Court of Probate in Dublin, and a copy thereof deposited with the registrar, together with a certified copy of the interlocutor of the commissary finding that such deceased person died domiciled in Scotland; such confirmation shall be sealed with the seal of the said Court, and returned to the person producing the same, and shall thereafter have the like force and effect in Ireland as if a probate or letters of administration, as the case may be, had been granted by the said Court of Probate in Dublin.

Sect. 14. From and after the date aforesaid, when any probate or letters of administration to be granted by the Court of Probate in England to the executor or administrator of a person who shall be therein, or by any note or memorandum written thereon, signed by the proper officer, stated to have died domiciled in England, or by the Court of Probate in Ireland to the executor or administrator of a person who shall in like manner be stated to have died domiciled in Ireland, shall be produced in the Commissary Court of the county of Edinburgh, and a copy thereof deposited with the commissary clerk of the said Court; the commissary clerk shall endorse or write on the back or face of such grant a certificate in the form as near as may be of the Schedule (F.) hereunto annexed; and such probate or letters of administration, being duly stamped, shall be of the like force and effect and have the same operation in Scotland as if a confirmation had been granted by the said Court.

Sect. 15. If any of the aforesaid cases, where the deceased person shall be stated in or upon the probate or letters of administration to have been domiciled in England or in Ireland, as the case may be, such probate or letters of administration shall, for the purpose of securing the payment of the full and proper stamp duties, be deemed and considered to be granted

for and in respect of the whole of the personal and movable estate and effects of the deceased in the United Kingdom, within the meaning of the Act of Parliament passed in the fifty-fifth year of the reign of King George the Third, chapter one hundred and eighty-four, and of all other Acts of Parliament granting or relating to stamp duties on probates and letters of administration in England or Ireland respectively, and the affidavit required by law to be made on applying for probate or letters of administration in England or Ireland as to the value of the estate and effects of the deceased, and also (where the commissary shall in manner aforesaid find that the deceased was domiciled in Scotland) the inventory required by law to be exhibited and recorded in the proper Commissary Court in Scotland before obtaining confirmation or intromitting with or entering upon the possession or management of the personal or movable estate or effects of the deceased in Scotland, shall respectively extend to and include the whole of the personal and movable estate of the deceased person in the United Kingdom and the value thereof; and the stamp duties for the time being chargeable on probates and letters of administration and on inventories respectively shall be chargeable upon any probate or letters of administration to be granted, any inventory to be exhibited and recorded as aforesaid respectively for and in respect of the whole of the personal and movable estate and effects of the deceased in the United Kingdom and the value thereof, and the said affidavit shall also separately specify the value of the said estate and effects in Scotland.

Sect. 16. For the purpose aforesaid, and also for granting relief where too high a stamp duty shall have been paid on any such probate or letters of administration or inventory, the provisions contained in sections forty, forty-one, forty-two, and forty-three of the said Act passed in the fifty-fifth year of his Majesty King George the Third, relating to the probates and letters of administration granted in England, and the like provisions in the Act passed in the fifty-sixth year of the said king, chapter fifty-sixth, relating to probates and letters of administration granted in Ireland, and the provisions contained in the Act passed in the forty-eighth year of the said king, chapter one hundred and forty-nine, relating to inventories in Scotland, and

also all other provisions contained in the said Acts respectively, or in any other Act or Acts relating to probates and letters of administration and inventories respectively, shall apply to the probates and letters of administration to which effect is given by this Act, and to the whole of the personal and movable estate of the deceased for or in respect of which the same shall, in pursuance of this Act, be deemed to be granted, wheresoever situate in the United Kingdom, and also to the inventories in which the whole of the personal and movable estate of the deceased, wheresoever situate in the United Kingdom, ought, in pursuance of this Act, to be included in as full and ample a manner as if all such provisions were herein enacted in reference to such probates, letters of administration, and inventories respectively.

Sect. 17. Provided that in any case where on applying for probate or letters of administration it shall be required to be stated as aforesaid that the deceased was domiciled in England or in Ireland, the affidavit so as aforesaid required by law shall specify the fact according to the deponent's belief, which shall be sufficient to authorise the same to be so stated in or upon the probate or letters of administration, provided also that any such statement and the interlocutor of the commissary finding that the deceased was domiciled in Scotland shall be evidence and have effect for the purposes of this Act only.

22 & 23 VICT. c. 36 (13th August, 1859.)

Extending the Graduated Scales of Probate Duty.

Sect. 1. Whereas certain stamp duties contained in the schedule to the Act passed in the fifty-fifth year of the reign of King George the Third, chapter one hundred and eighty-four, are now payable on probates of wills and letters of administration in England and Ireland, and upon inventories to be exhibited and recorded in any Commissary Court in Scotland, and are imposed by certain graduated scales according to the value of the estate and effects for or in respect of which such probate or letters of administration are granted, or whereof such

inventory is exhibited or recorded, but such graduated scales of duty cease where such value amounts to one million pounds and upwards, and it is expedient to extend and continue such graduation of duty as hereinafter mentioned: Be it enacted that in lieu of the said stamp duties upon such probate and letters of administration and inventories respectively, where such value as aforesaid shall amount to one million pounds or upwards, there shall be charged and paid the following duties respectively, that is to say,

For every one hundred thousand pounds of the whole value of such estate and effects and any fractional part of one hundred thousand pounds.

Where the deceased shall have left any will or testament or testamentary disposition of his personal or movable estate and effects, the stamp duty of one thousand five hundred pounds.

And where the deceased shall have not left any such will or testament or testamentary disposition, the stamp duty of two thousand two hundred and fifty pounds.

23 VICT. c. 5 (23rd March, 1860.)

Making Enfaced Indian Government Securities bona notabilia *in England.*

Sect. 1. All Indian Government promissory notes and certificates issued or stock created in lieu thereof, being assets of a deceased person, the interest whereon or in respect of which shall be payable in London by drafts payable in India, and which at the decease of the owner thereof shall have been registered in the books of the Secretary of State in Council in London, or in the books of the Governor and Company of the Bank of England, or shall have been enfaced in India for the purpose of being so registered before the decease of the owner thereof, and all Indian Government promissory notes issued with coupons attached, which, under such regulations and conditions as may be determined from time to time by the Secretary

of State in Council shall be so registered, and all certificates issued or stock created in lieu thereof shall be deemed and taken to be personal estate and *bona notabilia* of such deceased person in England, and probate or letters of administration in England or confirmation granted in Scotland and sealed with the seal of the principal Court of Probate in England in pursuance of the provisions of the Confirmation and Probate Act, 1858, shall be valid and sufficient to constitute the persons therein named the legal personal representatives of the deceased with respect to such notes and moneys as aforesaid.

23 VICT. c. 15 (3rd April, 1860.)

Charging Probate Duty upon Personal Property appointed under a Power, and upon Heritable Securities in Scotland.

Sect. 4. The stamp duties payable by law upon probates of wills and letters of administration with a will annexed in England and Ireland, and upon inventories in Scotland, shall be levied and paid in respect of all the personal or movable estate and effects which any person hereafter dying shall have disposed of by will under any authority enabling such person to dispose of the same as he or she shall think fit, and for the purpose of this Act such personal or movable estate and effects shall be deemed to be the personal or movable estate and effects of the person so dying, in respect of which the probate of the will or the letters of administration with the will annexed of such person are or is granted, or the inventory is or is required to be exhibited and recorded, as the case may be, and such estate and effects, and the value thereof, shall accordingly be included in the affidavit required by law to be made on applying for probate or letters of administration, in order to the full and proper stamp duty being paid.

Sect. 5. The said last-mentioned duties shall be a charge or burden upon the property in respect of which the same are so payable, and shall be paid thereout by the trustee or owners thereof to the person for the time being lawfully having or

taking the burden of the execution of the will or testamentary instrument, or the administration or management of the personal or movable estate and effects of the deceased, for the benefit of the persons entitled to the personal or movable estate and effects of the deceased.

Sect. 6. Money secured on heritable property in Scotland, and money secured by Scotch bonds in favour of heirs and assignees, excluding executors, shall, for the purposes of this Act, be held and interpreted to be movable property, and shall be included in any inventory to be exhibited and recorded in any Commissary Court in Scotland, of the estate and effects of any person deceased entitled thereto, and in England and Ireland respectively shall be deemed to be estate and effects for or in respect whereof any probate of will or letters of administration shall be granted, and every such inventory, probate, and letters of administration shall be chargeable with stamp duty in respect of such movable property.

23 & 24 VICT. c. 80 (6th August, 1860).

Regulating the Collection of Inventory Duty upon Heritable Securities and other Property in Scotland.

Recites the Act 23 Vict. c. 15, and enacts as follows :

Sect. 1. All money secured on heritable property in Scotland, and all money secured by Scottish bonds and other instruments, excluding executors, and all money secured by Scottish bonds and other instruments the rights to which shall be taken, excluding executors, constituting the succession or part of the succession of any person who shall have died on or after the third day of April in the year one thousand eight hundred and sixty, shall be liable to inventory duty under the said recited Act.

Sect. 2. The said duty, with interest thereon at the rate of five per centum per annum from the expiry of the period of six months after the death of such deceased person, shall be a debt to her Majesty, and shall be payable by any and every person

who shall take any money secured as aforesaid constituting the succession or part of the succession of any person deceased, and that whether he shall take the same as having a beneficial interest therein, or as trustee, or in any other capacity, and whether he shall have an absolute right or only a life rent or life interest, or other limited right or interest therein, and whether he shall take the same by *mortis causâ* conveyance, or by special destination, or by inheritance.

Sect. 3. The person or persons so taking such money as aforesaid shall, within six months next after taking the same or any part thereof or any interest due thereon, lodge with the Solicitor of Inland Revenue at Edinburgh a full and true inventory upon oath or solemn affirmation, to be called a "special inventory," in the form of the schedule annexed hereto, of all money secured as aforesaid constituting the succession or part of the succession of such deceased person, such special inventory having thereon a stamp denoting the duty payable on the value of such money secured as aforesaid contained in such inventory, being the same rate and amount of duty whether testate or intestate as the case may be, which would have been payable as inventory duty on movable or personal estate of the same value; and the oath or affirmation to the said special inventory may be taken before any magistrate or justice of the peace within the United Kingdom or the Colonies or any British consul; provided that in all cases the duty together with the interest and necessary expenses upon any money contained in such inventory, by whomsoever the same may have been originally paid, shall, in the absence of any special agreement or provision or valid testamentary directions to the contrary, be ultimately borne by the person or persons beneficially interested in such money, and if there shall be more than one person so interested, the duty shall be borne by them proportionally according to their several and beneficial interests in the money on which the duty has been so paid.

Sect. 4. It shall be lawful for the executor or executors of the deceased to add the amount of the money so secured and the value thereof, including the proceeds accrued thereon, as hereinafter mentioned to the inventory in Scotland of the

deceased's movable or personal estate, and to pay the stamp duty on the aggregate amount, in which case no special inventory or separate stamp duty shall be required from the person or persons beneficially entitled to the money so secured; provided that in this case the executor or executors of the deceased shall make oath (or, if so privileged, solemn affirmation) of the true amount and value of the said money and proceeds; and the contingent provision for return of duty hereinafter provided for in regard to the debts of the deceased shall in such case be applicable *mutatis mutandis*, and further in this case the inventory duty so paid on the aggregate amount of the deceased's movable or personal estate and of the said money and proceeds shall, in the absence of any special agreement of provision or valid testamentary direction to the contrary, be ultimately borne by the persons beneficially interested, proportionally according to their several and beneficial interests in the aggregate amount on which the stamp duty shall have been so paid and with right or relief accordingly.

Sect. 5. The special inventory provided by this Act, and the inventory of the personal estate of a deceased containing also the property on which duty is imposed by the recited Act and this Act, shall be stamped with duty according to the value of the property contained therein at the time they shall be respectively sworn to, including the proceeds accrued thereon down to that time, and the duty or deficient duty according to such value and proceeds and interest thereon, at the rate of five per centum per annum, shall be a debt due to her Majesty by the person making oath to said inventories; and it is hereby provided that the inventory and additional inventory of any person deceased, required to be exhibited and recorded in the proper Commissary Court in Scotland, shall be stamped with duty according to the value of the property contained therein at the time they shall be respectively sworn to, including the proceeds accrued thereon down to that time and the duty or deficient duty according to such value and proceeds, and interest thereon, at the rate of five per centum per annum, shall be a debt to her Majesty by the person making oath to said inventory and additional inventory, and his heirs and successors;

and if such inventory and additional inventory shall not be exhibited and recorded, the inventory duty on all the personal or movable estate and effects of the deceased, and interest thereon, at the rate of five per centum per annum, from the expiry of the period of six months after the death of such deceased person, shall be payable and shall be a debt to her Majesty by the person who shall intromit with or enter upon the possession and management of such personal or movable estate and effects or any part thereof, and his heirs and successors.

Sect. 6. The Commissioners of Inland Revenue shall grant a return of the said duty corresponding to a ratable apportionment of the amount by which the debts (in respect of which a claim for return of inventory duty may be competent) shall be proved to the satisfaction of the said Commissioners to exceed the personal estate of the deceased, between the amount of the money contained in the said special inventory and all the other heritable property of the deceased ; provided such return shall be claimed within three years from the date of lodging the special inventory.

Sect. 7. Every person shall for the purposes of this Act be held to have taken money secured as aforesaid, who shall have received or intromitted with such money or any part thereof or any interest due thereon, or who shall have made out a title thereto.

Sect. 8. Money secured upon heritable property by conveyance *ex facie* absolute, and money secured by adjudication when the right of reversion has not expired, and all money secured in any other way upon heritable property, shall be subject to the provisions of the recited Act and this Act; provided always that nothing therein and herein contained shall be held to apply to fee duties or to other permanent periodical payments, which are made a real burden upon land where payment of a capital sum of money is not thereby received.

Sect. 9. The said recited Act is hereby repealed in so far as it provides that, in England and Ireland, the said money shall be deemed estate and effects, for and in respect of which probate and letters of administration shall be granted, and shall be included in the affidavit made on applying for probate or letters of administration in England and Ireland.

SCHEDULE.

Special inventory of the money secured on heritable property in Scotland, and money secured by Scotch bonds, &c., excluding executors, belonging to [name and description of deceased], who died at on the day of 18 for payment of the duty imposed by the Act 23 & 24 Vict. c. 80.

	£	s.	d.
I. Bond and disposition in security dated granted by in favour of the deceased, over lands in the county of [Fife] [or houses in the city of (Edinburgh), &c. If deceased acquired right by assignation, &c., describe title]			
II. Interest thereof from the day of to the day of			
III. Bond dated , granted by in favour of the deceased, excluding executors. [If the deceased's right is by assignation, &c., describe right]			
IV. Interest thereon as above			

At the day of one thousand eight hundred and in the presence of Esquire, one of the magistrates for the city of [Edinburgh] [or justice of the peace, or British consul],

. Appeared , who, being solemnly sworn and examined, depones, that [name and description of deceased] died at on the day of ; that the deponent has right to the above subjects [or part of the above subjects, or to the life rent of the above subjects, &c.] as heir of the deceased [or as legatee, or as one of the trustees of the deceased, &c.] that the deponent knows of no settlement or other writing left by the deceased relative to the disposal of his personal estate or effects or any part thereof [or that the deponent does not know of any settlement or writing relative to

the disposal of the deceased's personal estate or effects of any part thereof other than a general disposition and deed of settlement dated the day of registered in the Books of Council and Session on the day of]; that the foregoing inventory, each page of which is signed by the deponent as relative hereto, is a full and complete special inventory of all the money or property belonging to the deceased and proceeds thereof liable to the duty imposed by the Acts 23 Vict. c. 15, and 23 & 24 Vict. c. 80 [this Act], in so far as the same has come to the deponent's knowledge, and that the said property is of the value of pounds and under the value of pounds; all of which is truth as the deponent shall answer to God.

24 & 25 VICT. c. 92.

Preventing a return of Probate Duty in respect of certain Voluntary Debts.

Sect. 3. No return of stamp duty paid upon any probate or letters of administration in England and Ireland, or any inventory of the estate and effects of any deceased person in Scotland, shall be made or allowed in respect of any voluntary debt due from any person dying after the twenty-eighth day of June, one thousand eight hundred and sixty-one, which shall be expressed to be payable on the death of such person, or payable under any instrument which shall not have been *bonâ fide* delivered to the donee thereof three months before the death of such person.

25 & 26 VICT. c. 22 (3rd June, 1862).

Assimilating certain Specialty Debts to Simple Contract Debts for the purposes of Probate Duty.

Sect. 39. For the purposes of the stamp duties on probates of wills and letters of administration, debts and sums of money due and owing from persons in the United Kingdom to any

deceased person at the time of his death, on obligation or other specialty, shall be estate and effects of the deceased within the jurisdiction of her Majesty's Court of Probate in England or Ireland, as the case may be, in which the same would be if they were debts owing to the deceased upon simple contract, without regard to the place where the obligation or specialty shall be at the time of the death of the deceased.

26 & 27 VICT. c. 57.

Regimental Debts Act, 1863.

Sect. 5. The surplus only of the personal property of an officer or soldier dying on service, remaining over after payment of preferential charges (mentioned in preceding section), shall be considered personal estate of the deceased, with reference to the calculation of probate duty, or of any other tax or percentage, or for any of the purposes of administration or distribution.

Sect. 15. Where the residue, *i.e.*, after payment of preferential charges, does not exceed one hundred pounds, it shall not be necessary for any purpose that representation to the deceased be taken out.

27 & 28 VICT. c. 36, ARMY PRIZE (SHARES OF DECEASED) ACT, 1864.

Sect. 2. Prize money includes bounty money, grant, or other allowance of money in the nature of prize or grant in the hands of the Commissioners of the Royal Hospital at Chelsea, or of their treasurer, deputy treasurer, or secretary, for distribution.

Sect. 3. The Commissioners of the Royal Hospital of Chelsea may in any case, if they think fit, authorise their treasurer or secretary to pay the share of prize money, not exceeding fifty pounds, belonging to any deceased officer, soldier, or other person or persons showing himself, herself, or themselves to the

satisfaction of the Commissioners to be entitled thereto or to a share thereof (as the case may be), without probate of the will or letters of administration to the estate of any deceased person being obtained or taken out.

27 & 28 VICT. c. 56 (29th July, 1864).

Declaring the liability of British Ships to Probate Duty, and exempting Estates not exceeding £100 in value.

Sect. 4. And whereas certain *ad valorem* stamp duties are by several statutes in that behalf granted and imposed upon or in respect of the following instruments (that is to say):

Probate of a will and letters of administration with or without a will annexed to be granted in England or Ireland:

Inventory to be exhibited and recorded in any Commissary Court in Scotland of the estate and effects of any person deceased:

Be it enacted that the said stamp duties shall be charged and paid in respect of the value of any ship, or any share of a ship, belonging to any deceased person, which shall be registered at any port in the United Kingdom, notwithstanding such ship, at the time of the death of the testator, may have been at sea or elsewhere out of the United Kingdom, and for the purpose of charging the said duties such ship shall be deemed to have been at the time aforesaid in the port at which she may be registered.

Sect. 5. No stamp duty shall be chargeable on any such probates, letters of administration, or inventory as aforesaid, in any case where the whole estate and effects of the deceased person dying after the passing of this Act, exclusive of what he shall have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially, shall be sworn not to exceed and shall not actually exceed in value the sum of one hundred pounds.

28 & 29 VICT. c. 104, Part V. (5th July, 1865).

Relating to the Recovery of Probate Duty in certain cases.

Sect. 57. If any person takes possession of, and in any way administers, any part of the personal estate of any person deceased, without obtaining probate of his will or letters of administration of his estate within six months after the decease or within two months after the termination of any suit or dispute respecting the will or the right to letters of administration, if there is any such suit or dispute that is not ended within four months after the death, the Commissioners of Inland Revenue may sue out of the Court of Exchequer, and now the Exchequer Division of the High Court of Justice, a writ of summons, commanding the person so taking possession and administering as aforesaid to deliver to the Commissioners an account of the estate of the deceased and of its value, and to pay such duty as would have been payable if probate or administration had been obtained and the cost of the proceedings, or to show cause to the contrary, and on cause being shown such order shall be made as seems just, and any such proceeding shall be a waiver of all penalties incurred in the premises by such person as aforesaid.

Sect. 58. In proceedings by writ of summons, as aforesaid, the Court may, if they think fit, refer the matter to the proper officer to report thereon, and may, if they think fit, order the facts contained in his report to be stated in the form of a special case for the opinion of the Court, and give directions as to the mode of settling the case, and the matters to be contained therein, and for the production of any documents, and may, if they think fit, direct any issue or issues of fact to be tried by a jury, and the Court may proceed to give judgment on the special case, and for any amount of the duty which the Court are of opinion is due to the Crown, and for costs, and on such judgment error may be brought and judgment given as on a special case stated by consent.

Sect. 59. In proceedings by writ of summons as aforesaid,

and also in cases of appeal to the Court of Exchequer from the assessment of the Commissioners of Inland Revenue under section fifty of the Succession Duty Act, an appeal shall lie from the decision of the Court or a judge on a case stated by the parties; or if they differ, settled by the Court of Exchequer or a judge, or any officer of the Court of Exchequer to whom the same is referred by the Court or a judge; and the Court of Appeal shall give such judgment as ought to have been given by the Court of Exchequer or judge, and may award costs.

Sect. 60. The appeal in all such cases as aforesaid shall be made to the Court of Error in the Exchequer Chamber, and the decision of that Court shall be subject to appeal to the House of Lords.

Sect. 61. No such appeal shall be allowed unless notice thereof is given in writing to the opposite party or attorney and to the proper officer of the Court of Exchequer, within four days after the decision complained of or such further time as may be allowed by the Court or a judge, and bail shall be given and approved of as provided with respect to suits at law on the revenue side of the Court of Exchequer.

Sect. 62. The Lord Chief Baron and two or more Barons of the Court of Exchequer shall, from time to time, make such general rules as seem fit for carrying this part of this Act into execution and for regulating the procedure and practice in proceedings by writ of summons as aforesaid.

Sect. 63. The forms of writs of summons given in the fourth schedule to this Act, applicable in the respective cases aforesaid, shall be used in those cases, with such variations as circumstances require; but general rules under this part of this Act may from time to time prescribe such altered, additional, or substituted forms of writs of summons for use in the respective cases aforesaid, or any of them, as seem fit, and the same shall be used accordingly.

Sect. 64. Subject to the provisions of this part of this Act, and to general rules made thereunder, proceedings by writ of summons as aforesaid shall be deemed proceedings at law on the revenue side of the Court of Exchequer within the meaning of sections ten, eleven, and sixteen to twenty-one (both inclusive) of the Act of the session of the twenty-second and twenty-third

years of the reign of her Majesty (chapter twenty-one), "to regulate the office of Queen's Remembrancer, and to amend the Practice and Procedure on the revenue side of the Court of Exchequer."

(G.)

For Account and Payment of Probate Duty.

VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, to greeting:

Whereas we have been given to understand, in our Court, before our Barons of the Exchequer at Westminster, that you, having taken possession of and administered some part or parts of the personal estate and effects of deceased, have not obtained probates of the will (*or* letters of administration of the estate and effects) of the said deceased within the time required by law.

Now we command you that (all excuses ceasing) within fourteen days from the service of this writ, or a copy thereof, you do deliver to our Commissioners of Inland Revenue an account, upon oath, of the estate and effects of the said deceased, and of the true value thereof, and that you do within the same time pay to the said Commissioners of Inland Revenue such duty as would have been duly payable on such probate (*or* letters of administration) as aforesaid, if the same had been duly obtained by you, and the costs of these proceedings, *or* that you the said do within the same time appear before the Barons of our said Exchequer at Westminster and show cause why you make default in the premises, and this you are in nowise to omit upon pain of process of contempt issuing against your person for your neglect therein.

Witness at Westminster, the day of in the year of our Lord one thousand eight hundred and sixty.

28 & 29 VICT. c. 111, NAVY AND MARINE (PROPERTY OF DECEASED) ACT, 1863.

Making Moneys due from the Admiralty exempt from Probate Duty in certain cases.

Sect. 3. On the death of any person being or having been an officer, seaman, or marine, the amount (if any) to the credit of the deceased in the books of the Admiralty in respect of sale of effects, arrears of pay, wages, prize money, bounty money, grants, or other allowances in the nature thereof, or other money payable by the Admiralty (which amount is hereafter in this Act, with reference to every such case, called the residue) shall be disposed of according to the provisions of this Act.

Sect. 4. On the death of any person being or having been employed in any of her Majesty's dockyards or other naval establishment, or in any of the civil departments of the navy, or entitled to an allowance from the Compassionate Fund, or of any widow entitled to a pension on the establishment of the navy, the amount (if any) due by the Admiralty (which amount is hereafter in this Act with reference to every such case called the residue) shall be disposed of according to the provisions of this Act.

Sect. 6. Where the residue does not exceed one hundred pounds it shall not be necessary for any purpose that representation to the deceased be taken out. . . .

Sect. 15. Where the residue does not exceed one hundred pounds, and is administered and disposed of under this Act without representation being taken out, it shall not be liable to the payment of any duty.

31 & 32 VICT. c. 90.

Empowering certain Public Departments to pay otherwise than to Executors or Administrators small sums due on account of pay or allowances to persons deceased.

Sect. 1. On the death of any person or persons to whom respectively any sum or sums not exceeding one hundred pounds

may be payable by a public department in respect of civil pay or allowances or annuities granted under authority of Parliament, it shall be lawful for the Commissioners of her Majesty's Treasury or for such departments as may be deputed by such Commissioner to exercise like powers in reference to claims payable on their orders respectively, on being satisfied of the expediency of dispensing with probate or letters of administration, to authorise the payment of such sum or sums to such person or persons as the said Commissioners or department may consider entitled thereto, without requiring the production of probate or letters of administration. Payment to be made under such regulations as the said Commissioners may seem fit.

Sect. 2. In the case of any civil or military allowances chargeable to the army votes or of army prize money, the sum not exceeding one hundred pounds, due at the death of a claimant may be dealt with by the Secretary of State for War or the Commissioners of Chelsea Hospital, in accordance with the enactments already in force with respect to sums of lesser amount similarly due.

31 & 32 VICT. c. 124 (31st July, 1868).

Allowing Mortgage Debts on Leaseholds to be deducted in the Affidavit of Value, and granting Interest on Arrears of Legacy and Succession Duty.

Sect. 7. From and after the first day of September, one thousand eight hundred and sixty-eight, where any leasehold estates form part of the estate and effects of a deceased person, for or in respect of which probate or letters of administration is or are to be granted in England or Ireland, and such leasehold estates are the sole security by way of mortgage for any debts due and owing from the deceased, the amount of such mortgage debts may be deducted from the value of the said leasehold estates, and the stamp duty shall be chargeable on the value of the estate and effects for or in respect of which the probate or letters of administration shall be granted after deducting therefrom the amount of such mortgage debts.

Sect. 8. In any case in which any such deduction as is authorised by the last preceding section is made, the affidavit to be required and received from the person applying for probate of the will or letters of administration of an estate and effects of a deceased person under the provisions of the thirty-eighth section of the Act of the fifty-fifth year of the reign of King George the Third, chapter one hundred and eighty-four, or under the provisions of the one hundred and seventeenth section of the Act of the fifty-sixth year of King George the Third, chapter fifty-six, shall be in the form contained in the schedule to this Act, and every such affidavit, with the account annexed thereto, if any, shall be transmitted in original to the Commissioners of Inland Revenue, in like manner as is directed by the ninety-third section of the Act of the twentieth and twenty-first years of her Majesty, chapter seventy-seven, and by the one hundredth section of the Act of the twentieth and twenty-first years of her Majesty, chapter seventy-nine, with reference to the original affidavit in such section respectively mentioned.

SCHEDULE.

FORM OF AFFIDAVIT required and to be received from persons applying for Probates of Wills and Letters of Administration in cases in which Mortgage Debts may be deducted from the value of Leaseholds.

No. 1.—*For Executors.*

A. E. of an executor [or A. E. of and B. E., of executors, as the case may be] named in the last will and testament [or in a codicil annexed to the last will and testament] of C. T. [the testator], late of who died on the day of 18 , maketh oath and saith [or make oath and say, or, in the case of affirmations, do or doth solemnly affirm and declare], that he [she or they] hath [or have] made diligent search and due

inquiry after and in respect of the personal estate and effects of the said deceased in order to ascertain the full amount and value thereof, and that to the best of his [her or their] knowledge, information, and belief, the whole of the goods and chattels, rights and credits, of which the said deceased died possessed (including any personal estate and effects which the deceased had disposed of under his will aforesaid under any authority enabling him to dispose of the same as he should think fit) *consisted of the property, moneys, securities, matters, and things specified in the account annexed to this affidavit, and* are under the value of pounds, exclusive of what the deceased may have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially, and without deducting anything on account of the debts due and owing from the deceased except in respect of leaseholds in mortgage; and further, that the particulars of the debts so deducted are as follows (that is to say), [here state briefly the date and particulars of the mortgage security in respect of every debt deducted], and that the said leaseholds are the sole security by way of mortgage for the said debts.

Sworn on the day of 18 , Before me, } [To be signed by the deponents]. A. E. B. E.

[NOTE.—The words printed in *italics* are to be used in Ireland only, and the account is to be in the form contained in Schedule III. to 56 Geo. 3, c. 56.]

No. 2.—For Administrators.

B. A. of [C. A. of], in order to the due administration of the personal estate and effects of D. I. [the intestate], late of , who died on the day of intestate, maketh oath and saith, &c. [*as in the preceding form, according or so far as the same may be applicable to administration with or without the will annexed*].

33 & 34 VICT. c. 97 (10th August, 1870.)

Imposing Conditions upon which Deeds, &c., may be stamped after execution.

Sect. 15. (1) Except where express provision to the contrary is made by this or any other Act, any unstamped or insufficiently stamped instrument may be stamped after the execution thereof, on payment of the unpaid duty, and a penalty of ten pounds, and also by way of further penalty where the unpaid duty exceeds ten pounds, of interest on such duty at the rate of five pounds per centum per annum, from the day upon which the instrument was first executed, up to the time when such interest is equal in amount to the unpaid duty.

And the payment of any penalty or penalties is to be denoted on the instrument by a particular stamp.

(2) Provided as follows:—

(*a*) Any unstamped or insufficiently stamped instrument, which has been first executed at any place out of the United Kingdom, may be stamped at any time within two months after it has been first received in the United Kingdom on payment of the unpaid duty only.

(*b*) The Commissioners may, if they think fit, at any time within twelve months after the first execution of any instrument, remit the penalty or penalties, or any part thereof.

38 & 39 VICT. c. 60 (Friendly Societies Act, 1875).

Sect. 15. Registered societies shall be entitled to the following privileges:

Sub-sect. 2. Stamp duty shall not be chargeable upon any of the following documents:

(*b*) Order or receipt for money contributed to or received from the funds of the society by virtue of its rules or of this Act.

Sub-sect. 3. A member of a society (other than a benevolent society or working-men's club), not being under the age of sixteen years, may by writing under his hand delivered at or sent to the registered office of the society, nominate any person, not being an officer or servant of the society, to whom any moneys payable on the death of such member, not exceeding fifty pounds, shall be paid at his decease, and may from time to time revoke or vary such nomination by a writing under his hand similarly delivered or sent; and on receiving satisfactory proof of the death of a nominator, the society shall pay to the nominee the amount due to the deceased member not exceeding the sum aforesaid.

Sub-sect. 4. If any member of a society, entitled from the funds thereof to a sum not exceeding fifty pounds, dies intestate and without having made any nomination under this Act which remains unrevoked at his death, such sum shall be payable with the letters of administration to the person who appears to a majority of the trustees, upon such evidence as they may deem satisfactory, to be entitled by law to receive the same.

39 & 40 VICT. c. 70 (15th August, 1876).

Amending Law as to Confirmation of Executors and extending provisions of Sections 12 *and* 13 *of* 21 *&* 22 *Vict. c.* 56.

Sect. 41. Where under the provisions of the ninth and subsequent sections of the Act passed in the twenty-first and twenty-second years of the reign of her present Majesty, chapter fifty-six, intituled "An Act to amend the law relating to the confirmation of executors in Scotland, and to extend over all parts of the United Kingdom the effect of such confirmation and of grants of probate and administration," it shall be desired

to include in the inventory of the personal estate of any person dying domiciled in Scotland personal estate situated in England or Ireland, it shall not be necessary to have a special proceeding before the sheriff with the view of his pronouncing therein an interlocutor finding that the deceased died domiciled in Scotland. That fact shall be set forth in the affidavit to the inventory, and it being so set forth therein shall be sufficient warrant for the sheriff-clerk to insert in the confirmation or to note thereon and sign a statement that the deceased died domiciled in Scotland; and such statement shall have the same effect as a certified copy interlocutor finding that the deceased person died domiciled in Scotland; and sections twelve and thirteen of the said Act, so far as they make it a condition of the sealing of a confirmation in the principal Court of Probate in England or in the Court of Probate in Dublin, that the copy of the confirmation provided to be deposited with the registrar shall be accompanied by such a certified copy interlocutor, are hereby repealed.

Sect. 42. When an additional inventory has been given in and recorded and confirmation granted in a Sheriff Court in Scotland of estate situated in England or Ireland of a person who died domiciled in Scotland, and the additional confirmation shall be produced in the principal Court of Probate in England, or in the Court of Probate in Dublin, as the case may be, and a copy thereof deposited with the Registrar of the Court, such additional confirmation shall be sealed with the seal of the Court, and returned to the person producing the same, and that whether the original confirmation shall have been sealed with the seal of the Court or not, and although the additional inventory confirmed shall not contain any estate of the deceased situated in Scotland, and such additional confirmation when so sealed shall thereafter have the same force and effect as if probate or letters of administration, as the case may be, had been granted by the Court of Probate in which it had been sealed.

Sect. 43. When any confirmation or additional confirmation of personal estate situated in Scotland, which shall contain, or have appended thereto, and signed by the sheriff-clerk, a note or statement of funds in England or Ireland, or both, held by the deceased in trust, shall be produced in the principal Court of Probate in England, or in the Court of Probate in Dublin, as

the case may be, such confirmation shall be sealed with the seal of such Court in the same manner as is provided by sections twelve and thirteen of the Act passed in the twenty-first and twenty-second years of the reign of her present Majesty, chapter fifty-six, as amended by this Act, with respect to sealing confirmations which include personal estate situated in England or Ireland respectively; and such confirmation shall thereafter have the like force and effect in England and Ireland with respect to such funds as if probate or letters of administration, as the case may be, had been granted by the Court of Probate in which it had been sealed; and such note or statement may be inserted or appended as aforesaid by the sheriff-clerk, provided the same shall have been set forth in any inventory which has been recorded in the books of the Court of which he is clerk.

40 & 41 VICT. c. 13 (11th June, 1877).

Amending Law relating to Stamp Duties.

Sect. 12. On and after the first day of October next, all inventories of the personal or movable estate and effects of deceased persons which shall be exhibited or recorded in Scotland under the provisions of any Act of Parliament shall, together with the oath or affirmation relating thereto, be transmitted by the commissary clerks or the sheriff clerks as often as required to the Controller of Legacy and Succession Duties, at his office in Edinburgh, instead of the Solicitor of Inland Revenue there, and all inventories to be lodged in conformity with the Act of the twenty-third and twenty-fourth year of her present Majesty, chapter eighty, shall be lodged with the said Controller instead of the said Solicitor, and the said Solicitor shall transfer all inventories which have at any time theretofore been filed in his office to the said Controller, and the said Controller shall have the custody of all inventories so transferred and all inventories so transmitted, and shall file and preserve the same at his office in Edinburgh, and all enactments relating to any such inventories shall be read as if the officer to or with whom inventories are thereby directed to be transmitted or lodged were the Controller of Legacy and Succession Duties in Edinburgh.

The following are the forms prescribed by the General Orders of the Probate Court for use on applying for Probate :

No. 1.—*Affidavit for the Commissioners of Inland Revenue.*

For Executors (*Leaseholds included*).

In her Majesty's Court of Probate. The principal Registry. In the goods of A. B., deceased.

I, C. D., of [*insert the names, residence, and title or addition of the deponent*] make oath [*or* solemnly and truly declare and affirm *according to the form of words prescribed by the statute applicable to the particular case*], that I am one of the executors [*or* the executor] named in the last will and testament [*insert codicils if any*] of A. B., late of deceased ; that the said deceased died on the day of in the year of our Lord one thousand hundred and at [*insert place of death or set forth the reason why the same cannot be furnished*], and that the personal estate and effects of the said deceased, which he any way died possessed of or entitled to, and for or in respect of which a probate of the said will is to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person or persons and not beneficially [*if the deceased died on or after 3rd April*, 1860, *add*, "but inclusive of all personal estate and effects which the said deceased under any authority enabling him [*or* her] to dispose of the same as he [*or* she] might think fit, has disposed of by his [*or* her] said will,"] including the leasehold estate or estates of the said deceased, whether absolute or determinable on a life or lives, and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds to the best of my knowledge, information, and belief.

Sworn at on the day of 18 } (Signed) C. D.

Before me,

(Person authorised to administer oaths under the Act).

N.B.—If an affirmation be made instead of an affidavit, it must set forth the ground upon which the affirmant claims his privilege in the following manner, viz.: "I, A. B., being one of the people called Quakers [*or* of the persuasion of the people called Quakers, *or* of the United Brethren called Moravians, *or otherwise as the case may be*] do solemnly, sincerely, and truly declare and affirm that," &c. (*See* 3 & 4 Wm. 4, c. 49, s. 1.)

If a person claims the exemption given by 17 & 18 Vict. c. 125, s. 20, the affirmation will be as follows: "I, A. B., do solemnly, sincerely, and truly affirm and declare that the taking of an oath is, according to my religious belief, unlawful, and I do also solemnly and truly affirm and declare," &c.

No. 2.—Affidavit for the Commissioners of Inland Revenue.

For Executors (*no Leaseholds*).

In her Majesty's Court of Probate. The principal Registry. In the goods of A. B., deceased.

I, C. D., of [*insert the name, and title, profession, or addition of the deponent*], make oath [*or* solemnly, sincerely, and truly affirm and declare *according to the form of words prescribed by the statute applicable to the particular case*] that I am the executor named in the last will and testament [*insert codicils if any*] of the said A. B., late of deceased; that the said deceased died on the day of in the year of our Lord one thousand eight hundred and at [*insert the place of death or set forth the reason why the same cannot be furnished*], and that the personal estate and effects of the said deceased, which he any way died possessed of or entitled to, and for or in respect of which a probate of the said will is to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person or persons and not beneficially, *but inclusive of all personal estate and effects which the said deceased, under any authority enabling him to dispose of the same as he might think fit, has disposed of by his said will*, and without deducting anything on account of the debts due and owing from the said deceased, are

under the value of pounds to the best of my knowledge, information, and belief. And I lastly make oath that the said deceased was not possessed of or entitled to any leasehold estate or estates for years, whether absolute or determinable on a life or lives, to the best of knowledge, information, and belief.

Sworn by the said C. D. at
on the day of 18 } (Signed) C. D.
Before me,

No. 3.—Affidavit for the Commissioners of Inland Revenue.

For Administrators.

In her Majesty's Court of Probate. The principal Registry. In the goods of A. B., deceased.

I, C. D., of [*insert the name, residence, title, or addition of the deponent*], the party applying for letters of administration of the personal estate and effects of A. B., late of
make oath [*or* solemnly, sincerely, and truly declare and affirm *according to the form of words prescribed by the statute applicable to the particular case*] that the said deceased died on the day of one thousand hundred and at [*insert place of death, or set forth the reason why the same cannot be furnished*], and that the personal estate and effects of the said deceased, which he any way died possessed of or entitled to, and for or in respect of which letters of administration are to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person or persons and not beneficially [*if leaseholds, insert clause given in No.* 1], and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds to the best of my knowledge, information, and belief. [*If no leaseholds, insert clause given in No.* 2.]

Sworn at on the
day of 18 } (Signed) C. D.
Before me,
(Person authorised to administer
oaths under the Act.)

No. 4.—Affidavit for the Commissioners of Inland Revenue.

For Administrators, with the will annexed.

In her Majesty's Court of Probate. The principal Registry. In the goods of A. B., deceased.

I, C. D., of [*insert the names, residence, and title or addition of the deponent*], the party applying for letters of administration, with the will [*insert codicils, if any*] annexed, of the personal estate and effects of A. B., late of deceased, make oath [*or* solemnly, sincerely, and truly declare and affirm, *according to the form of words prescribed by the statute applicable to the particular case*] that the said deceased died on the day of one thousand hundred and at [*insert the place of death or set forth the reason why the same cannot be furnished*], and that the personal estate and effects of the said deceased, which he any way died possessed of or entitled to, and for or in respect of which letters of administration with the said will [*insert codicils, if any*] annexed are to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person or persons and not beneficially [*if the deceased died on or after 3rd April,* 1860, *add*: "but inclusive of all personal estate and effects which the said deceased, under the authority enabling him [*or* her] to dispose of the same as he [*or* she] might think fit, has disposed of by his [*or* her] said will"], including the leasehold estate or estates for years of the said deceased, whether absolute or determinable on a life or lives, and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds to the best of my knowledge, information, and belief.

Sworn at on the day of 18 } (Signed) C. D.

Before me,

No. 5.—Affidavit for the Commissioners of Inland Revenue.

For Administrators with the Will annexed.

In her Majesty's Court of Probate. The principal Registry. In the goods of A. B., deceased.

I, C. D., of [*insert the names, residence, and title or addition of the deponent*], the party applying for letters of administration, with the will [*insert codicils, if any*] annexed, of the personal estate and effects of A. B., late of deceased, make oath [*or* solemnly, sincerely, and truly declare and affirm *according to the form of words prescribed by the statute applicable to the particular case*] that the said deceased died on the day of one thousand hundred and at [*insert the place of death or set forth the reason why the same cannot be furnished*], and that the personal estate and effects of the said deceased, which he any way died possessed of or entitled to, and for or in respect of which letters of administration, with the said will [*insert codicils, if any*] annexed, are to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person or persons and not beneficially [*if the deceased died on or after 3rd April*, 1860, *add*: "but inclusive of all personal estate and effects which the said deceased, under any authority enabling him [*or* her] to dispose of the same as he [*or* she] might think fit, has disposed of by his [*or* her] said will"], and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds to the best of my knowledge, information, and belief. And I lastly make oath that the said deceased was not possessed of or entitled to any leasehold estate or estates for years, either absolute or determinable on a life or lives, to the best of my knowledge, information, and belief.

Sworn at on the day of 18 } (Signed) C. D.

Before me,

(Person authorised to administer oaths under the Act.)

No. 6.—*Affidavit for the Commissioners of Inland Revenue when Stamp Duty is paid upon the total value of the Personal Estate in the United Kingdom.*

For Executors.

In her Majesty's Court of Probate. The principal Registry. In the goods of A. B., deceased.

I, C. D., of [*insert the names, residence, and title, or addition of the deponent*], make oath [*or* solemnly, sincerely, and truly declare and affirm *according to the form of words prescribed by the statute applicable to the particular case*] that I am one of the executors [*or as the case may be*] named in the last will and testament, with codicils (if any) thereto, of A. B., late of deceased, that the said deceased died on the day of in the year of our Lord one thousand hundred and at [*insert place of death or set forth the reason why the same cannot be furnished*], and was at the time of his death domiciled in England, and that the personal estate and effects of the said deceased, which he any way died possessed of or entitled to within the United Kingdom of Great Britain and Ireland, and for or in respect of which a probate of the said will and codicil is to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person or persons and not beneficially [*if the deceased died on or after the 3rd April*, 1860, *add*: "but including all personal estate and effects which the said deceased, under any authority enabling him [*or* her] to dispose of the same as he [*or* she] might think fit, has disposed of by his [*or* her] said will [*if any leaseholds, insert clause given in No.* 1],"] and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds to the best of knowledge, information, and belief. [*If no leaseholds, insert clause given in No.* 2.] And further make oath [*or* solemnly, sincerely, and truly declare and affirm] that a part of the said personal estate and effects of the said deceased under the value of pounds is in England, and a further part thereof amounting in value to the sum of

and more particularly mentioned and set forth in the inventory and valuation hereunto annexed, is in Scotland, and that the said deceased was not at the time of his death possessed of or entitled to any personal estate and effects in Ireland [*if there is personal estate in Ireland, a further affidavit in form No. 9 is to be made by executors and administrators*] to the best of knowledge, information, and belief [*or and thus*: and that a further part thereof, amounting in value to the sum of is in Ireland, to the best of knowledge, information, and belief].

Sworn at on the day of 18 } (Signed) C. D.

Before me,

(Person authorised to administer oaths under the Act.)

No. 7.—Affidavit for the Commissioners of Inland Revenue when Stamp Duty is paid upon the total value of the Personal Estate in the United Kingdom.

For Administrators with Will.

In her Majesty's Court of Probate. The principal Registry. In the goods of A. B., deceased.

I, C. D., of [*insert the names, residence, and title or addition of the deponent*], the party applying for letters of administration [with the will annexed] of the personal estate and effects of A. B., late of deceased, make oath [*or* solemnly, sincerely, and truly declare and affirm *according to the form of words prescribed by the statute applicable to the particular case*] that the said deceased died on or about the day of one thousand hundred and at [*insert the place of death or set forth the reason why the same cannot be furnished*], and was at the time of his death domiciled in England, and that the personal estate and effects of the said deceased, which he any way died possessed of or entitled to within the United Kingdom of Great Britain and Ireland, and for or in respect of which letters of administration with the said will annexed are to be granted, exclusive of what the

said deceased may have been possessed of or entitled to as a trustee for any other person or persons and not beneficially [*if the deceased died on or after 3rd April*, 1860, *add*: "but including all personal estate and effects which the said deceased, under any authority enabling him [*or* her] to dispose of the same as he [*or* she] might think fit, has disposed of by his or her said will"] [*if any leaseholds, insert clause given in No.* 1] and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds to the best knowledge, information, and belief [*if no leaseholds, insert clause given in No.* 2]. And further make oath [*or* solemnly, sincerely, and truly declare and affirm] that a part of the said personal estate and effects of the said deceased, under the value of is in England, and a further part thereof amounting in value to the sum of and more particularly mentioned and set forth in the inventory and valuations hereunto annexed, is in Scotland, and that the said deceased was not at the time of his death possessed of or entitled to any personal estate and effects in Ireland [*if there is personal estate in Ireland, a further affidavit, in form No.* 9, *is to be made by executors and administrators*] to the best of knowledge, information, and belief. [*Or end thus*:] And that a further part thereof amounting in value to the sum of is in Ireland, to the best of knowledge, information, and belief.

Sworn at on the day of 18 } (Signed) C. D.

Before me,

(Person authorised to administer oaths under the Act.)

No. 8.—*Affidavit for the Commissioners of Inland Revenue when Stamp Duty is paid upon the total value of the Personal Estate in the United Kingdom.*

For Administrators.

In her Majesty's Court of Probate. The principal Registry.
In the goods of A. B., deceased.

I, C. D., of [*insert the names, residence, and title or addition*

of the deponent], the party applying for letters of administration of the personal estate and effects of the said late of deceased, make oath [*or* solemnly, sincerely, and truly declare and affirm *according to the form of words prescribed by the statute applicable to the particular case*] that the said deceased died on the day of one thousand hundred and at [*insert the place of death or set forth the reason why the same cannot be furnished*], and was at the time of his death domiciled in England, and that the personal estate and effects of the said deceased, which he any way died possessed of or entitled to within the United Kingdom of Great Britain and Ireland, and for or in respect of which letters of administration are to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially [*if there are any leaseholds, insert clause from No.* 1], and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds to the best of knowledge, information, and belief. [*If no leaseholds, insert clause given in No.* 2.] And I further make oath [*or* solemnly, sincerely, and truly declare and affirm] that a part of the said personal estate and effects of the said deceased under the value of pounds is in England, and a further part thereof amounting in value to the sum of and more particularly set forth in the inventory and valuation hereunto annexed, is in Scotland, and that the said deceased was not at the time of his death possessed of or entitled to any personal estate and effects in Ireland [*if there is personal estate in Ireland, a further affidavit, in form No.* 9, *is to be made by executors and administrators*] to the best of knowledge, information, and belief [*or end thus*: And that a further part thereof amounting in value to the sum of is in Ireland to the best of knowledge, information, and belief].

Sworn at on the day of 18 } (Signed) C. D.

Before me,

(Person authorised to administer oaths under the Act.)

No. 9.—Additional Affidavit and Schedule for the Commissioners of Inland Revenue when part of the Personal Estate consists of Property in Ireland.

In her Majesty's Court of Probate. The principal Registry.

I, A. B., of an executor [*or* A. B., of and C. D., of executors] named in the last will and testament, with codicils [*or* the party or parties applying for letters of administration, with the will and codicils annexed, of the personal estate and effects] of E. F. [*the testator*], late of who died on the day of one thousand eight hundred and at [*or, in cases of intestacy,* in order to the due administration of the personal estate and effects of G. H. [*the intestate*], late of who died on the day of one thousand eight hundred and at intestate], make oath and say [*or, in the case of Quakers or other affirmants,* do or doth solemnly, sincerely, and truly declare and affirm] that ha made diligent search and due inquiry after and in respect of the personal estate and effects of the said deceased in Ireland, in order to ascertain the full amount and value thereof, and that to the best of knowledge, information, and belief the whole of the personal estate and effects, rights and credits, of which the said deceased died possessed in Ireland, consisting of the property, moneys, securities, matters, and things specified in the account annexed to this affidavit [*or* affirmation], are under the value of pounds, exclusive of what the deceased may have been possessed of or entitled to as a trustee for any other person or persons and not beneficially, and without deducting anything on account of the debts due and owing from the deceased.

Sworn at in the county of on the day of 18 } (Signed) A. B.

Before me,

(Person authorised to administer oaths under the Act.)

AN ACCOUNT OF THE ESTATE AND EFFECTS OF

	Price of Stocks.	£ s. d.
Household goods, linen, wearing apparel, books, plate, jewels, &c.		
Property in the stocks or funds transferable at the bank		
Leasehold property		
Property in public companies		
Money out on mortgage and other securities		
Real estate devised to be sold, or value of legacies charged on real estate ...		
Stock-in-trade, farming stock, and implements of husbandry		
Other personal property not comprised under the foregoing heads		

No. 29.—Affidavit to lead Commissioner's Certificate as to Stamp Duty.

In the executorship of A. B., deceased.

C. D., of maketh oath and saith that probate of the will of the said A. B., late of deceased, who died on the day of one thousand eight hundred and . was granted to this deponent by her Majesty's Court of Probate in Ireland on the day of one thousand eight hundred and as the sole executor named in the said will:

And this deponent further saith that the estate and effects of the said deceased in England and Ireland, for or in respect of which the said probate was granted, were then sworn to be under the value of pounds, and a stamp duty of pounds was accordingly paid upon the said probate:

And this deponent further saith that it is necessary that the said probate should be sealed with the seal of her Majesty's Court of Probate in England, under and by virtue of the 95th section of the 21 & 22 Vict. c. 79:

And this deponent further saith that the schedule hereunto

annexed, marked No. 1, doth contain a true and perfect inventory, account, and valuation of the personal estate and effects whereof the said deceased died possessed in England, and that the schedule also hereunto annexed, and marked No. 2, doth contain a true and perfect inventory, account, and valuation of the personal estate and effects whereof the said deceased died possessed in Ireland, and for which respectively the said probate was granted by her Majesty's Court of Probate in Ireland, exclusive of what the deceased may have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially, and that the said deceased was not possessed of or entitled to any leasehold estate or estates for years, whether absolute or determinable on a life or lives :

And this deponent further saith that the said deceased was not possessed of or entitled to any other personal estate and effects whatsoever, save the personal estate and effects mentioned and referred to in the said schedules hereunto annexed, and marked respectively No. 1 and No. 2 :

And this deponent further saith that it is his intention to apply to her Majesty's Court of Probate in England to reseal the said probate in respect only of the personal estate and effects mentioned and referred to in the said schedule hereunto annexed, marked No. 1, and not for the purpose of covering any other property or effects whatsoever :

All which is submitted to the Commissioners of Inland Revenue by this deponent, who prays that they will grant him a certificate that the said probate is already duly stamped.

Sworn at this } (Signed) C. D.
day of 18 }

Before me,

N.B.—This is to be engrossed on a two shillings and sixpence stamp.

No. 1.

	£	*s.*	*d.*
Four shares in the Peninsular and Oriental Steam Navigation Company			
Dividends due thereon			

(Signed by deponent and Commissioner.)

No. 2.

	£	*s.*	*d.*
Value of one-third of the household goods of her late husband as appears by his schedule ...			
Value of one-third plate			
Cash lodged at Ulster Bank, Downpatrick, to the credit of deceased			
Interest due thereon, &c. &c.			

(Signed by deponent and Commissioners.)

Affidavit for the Commissioners of Inland Revenue.

For Executors.

In her Majesty's Court of Probate.[1] The district Registry at In the goods of A. B., deceased.

I, C. D., of [*insert the name and residence and title or addition of the deponent*] make oath [*or* solemnly, sincerely, and truly affirm and declare *according to the form of words prescribed by the statute applicable to the particular case*] that I am one of the executors [*or* the executor] named in the last will and testament [*insert codicils, if any*] of A. B., late of deceased; that the said deceased died on the day of one thousand hundred and at [*insert place of death or set forth the reason why the same cannot be furnished*], and that the said deceased had at the time of his death a fixed place of abode at within the district of and that the personal estate and effects of the said deceased, which he in any way died possessed of or entitled to, and for or in respect of which a probate of the said will is to be granted, exclusive of what the said

[1] This, as well as other affidavits to be made in the district registries, are the same as those for the principal registry, with the difference of the heading "The district registry at " and the addition of the form "that the said deceased had at the time of his death a fixed place of abode at within the district of " as in this form, instead of a simple statement of where he died.

deceased may have been possessed of or entitled to as a trustee for any other person or persons and not beneficially [*if the deceased died on or after* 3*rd April*, 1860, *add* : "but inclusive of all personal estate and effects which the said deceased, under any authority enabling him [*or* her] to dispose of the same as he [*or* she] might think fit, has disposed of by his [*or* her] said will [*if any leaseholds, insert clause given in No.* 1[1]] and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds to the best of my knowledge, information, and belief. [*If no leaseholds, insert clause given in No.* 2.]

Sworn at on the day of 18 } (Signed) C. D.

Before me,

(Person authorised to administer oaths under the Act.)

The following are the official

REGULATIONS for amending and altering the Stamp Duties on Probates of Wills or Letters of Administration on which too much or too little Stamp Duty shall have been paid on the original grant, in consequence of a mistake in the estimate of the value of the estate and effects of the deceased, under the provisions of Sections 40 *and* 41 *of the* 55 *Geo.* 3, *c.* 184.

1. Application must be made in the first instance by the executor or administrator, in person or by his agent, in the Legacy Duty Department, and within six calendar months after the true value of the effects shall have been ascertained, and it shall be discovered that too much or too little duty has been paid ; and an affidavit by the executor or administrator, executors or administrators, stating the circumstance of the case in the form subjoined, must be delivered with the probate or letters of administration.

2. The affidavit must be made before a Commissioner to Administer Oaths in the Supreme Court, and upon a two

[1] *See* p. 100.

shillings and sixpence stamp, unless the executors or administrators shall attend in person at the Legacy Duty Office, in which case the affidavit may be sworn there, and will not require a stamp, but must be brought ready written for examination.

3. In all cases of a return of duty being applied for, or of further duty being paid, there must be subjoined to the affidavit a correct inventory and account of the estate and effects of the deceased, which must be subscribed by the person or persons making the affidavit, and all appraisements of the deceased's effects must be duly stamped.

4. In cases of letters of administration on which too little duty shall have been paid at first, there must be delivered with the affidavit a certificate from the proper officer of the Court of Probate, that the administrator hath given further security for the due administration of the personal estate of the deceased, in consequence of the same having since discovered to be of greater value than was first sworn to, pursuant to the above Act, section 42.

5. It is indispensable that the application be made personally by the executor, administrator, or his agent, at the Legacy Duty Office, and if the affidavit, probate, or other documents be transmitted by post, or left under cover at this Office, the application cannot be entertained.

6. If the application shall be made by an agent for the executors or administrators, he must write his name and place of residence at the foot of the affidavit.

7. The Probate Duty clerk will compare the affidavit with the probate or letters of administration, and see that it contains all the particulars required by the forms subjoined, and especially that the Court which granted the probate or letters of administration is correctly stated and described.

8. The Board will retain the affidavit and the inventory account and valuation and certificate above mentioned, to be filed; and will deliver the warrant, with the probate or letters of administration, to the person making the application. The warrant will contain directions for the further proceedings.

And no fees or gratuities are to be taken by any officer or clerk at the Inland Revenue Office for anything done by him in pursuance of the aforegoing regulations, but the whole business to be done there is to be free of expense.

1. *Affidavit for obtaining a Return of Duty on Probates and Letters of Administration, on which too much duty shall have been paid on taking out the same.*

To be filled in from the Circular Letter issued by the Legacy Duty Department.	*Register*	*No.* 18	*Folio*

In the executorship [*or administration*] of deceased.

A. B. of &c. [*or* A. B. of &c. and C. D. of &c.] maketh oath and saith [*or* make oath and say] that probate of the last will and testament [*or* letters of administration of the goods, chattels, and credits, with the will annexed, *if so*] of E. F., late of &c., deceased, who died on the day of one thousand eight hundred and was [*or* were] granted to this deponent [*or* these deponents] by the Court of [*observe here to state the Court correctly*] on the day of one thousand eight hundred and and that the estate and effects of the said deceased for or in respect of which the said probate was [*or* letters of administration were] granted, were then sworn to be under the value of pounds, and a stamp duty of pounds was accordingly paid on the said probate [*or* letters of administration], and this deponent further saith [*or* these deponents further say] that since obtaining the said probate [*or* letters of administration] and within six calendar months now last past the true value of the estate and effects hath been ascertained, and it hath been discovered that too high a stamp duty was paid thereon; for that

[Here state the facts and circumstances of the case, to show how it happened that too much stamp duty was paid, AND AT WHAT PARTICULAR TIME, AND THROUGH WHAT CIRCUMSTANCES, THE LESSER VALUE WAS DISCOVERED.]

And this deponent further saith [*or* these deponents further say] that the schedule hereunto annexed and subscribed by him [*or* her, or them], and marked No. 1, doth contain a true and perfect inventory, account, and valuation of the personal estate and effects, whereof the said deceased was possessed, and for which the said probate was [*or* letters of administration were] granted by the Court aforesaid, exclusive of what the deceased,

may have been possessed of or entitled to as a trustee for any other person or persons and not beneficially, and particularly (**A**) all the property over which the deceased had a general power of appointment, (**B**) and that the said inventory includes all the leasehold estates for terms of years, absolute, or determinable on a life or lives whereof the said deceased died possessed, and that such personal estate and effects being now fully got in, or the amount thereof clearly ascertained, did not at the time the said probate was [*or* letters of administration were] granted exceed the sum of and are under the value of pounds, according to the best of the knowledge, information, and belief of this deponent [*or* these deponents]. And that the said deceased did not die possessed of any other personal estate and effects whatever, either in Great Britain or elsewhere, to the best of this deponent's [*or* these deponents'] knowledge and belief (**C**). And therefore this deponent saith [*or* these deponents say] that he hath [*or* they have] been informed and believes [*or* believe] that a stamp duty of pounds, and no more, ought to have been paid on the said probate [*or* letters of administration].—All which is submitted to the Commissioners of Inland Revenue, praying that the sum of pounds, being the amount of duty overpaid, may be returned to this deponent [*or* these deponents—*or* to G. H., the agent of this deponent or deponents, whose receipt shall be a sufficient discharge for the same]; and that the stamp or stamps on the said probate [*or* letters of administration] may be rectified as the law directs.

The above affidavit to be made by all the executors or administrators.

2. *Affidavit to be made in the case of too little Duty having been paid on Probates and Letters of Administration on taking out the same.*

To be filled in from the Circular Letter issued by the Legacy Duty Department.	*Register*	*No.*	18	*Folio*

In the executorship [*or administration*] of deceased.

A. B. of &c. [*or* A. B. of &c. and C. D. of &c.] maketh oath and saith [*or* make oath and say] that probate of the last will and testament [*or* letters of administration of the goods, chattels, and credits, with the will annexed, *if so*] of E. F., late of &c., deceased, who died on the day of one thousand eight hundred and was [*or* were] granted to this deponent [*or* these deponents] by the Court of [*observe here to state the Court correctly*] on the day of one thousand eight hundred and and that the estate and effects of the said deceased, for or in respect of which the said probate was [*or* letters of administration were] granted, were then sworn to be under the value of pounds, and a stamp duty of pounds was accordingly paid on the said probate [*or* letters of administration]. And this deponent further saith [*or* these deponents further say] that since obtaining the said probate [*or* letters of administration] and within six calendar months now last past, the true value of the estate and effects have been ascertained, and it hath been discovered that too little stamp duty was paid thereon; for that

[Here state the facts and circumstances of the case, to show how it happened that too little stamp duty was paid, AND AT WHAT PARTICULAR TIME, AND THROUGH WHAT CIRCUMSTANCES, THE HIGHER VALUE WAS DISCOVERED.]

And this deponent further saith [*or* these deponents further say] that the schedule hereunto annexed and subscribed by him [*or* her, *or* them], and marked No. 1, doth contain a true and perfect inventory, account, and valuation of the personal estate and effects whereof the said deceased was possessed, and for which the said probate was [*or* letters of administration were] granted by the Court aforesaid, exclusive of what the deceased may have been possessed of or entitled to as a trustee for any other person or persons and not beneficially, and particularly (**A**) all the property over which the deceased had a general power of appointment, (**B**) and that the said inventory includes all the leasehold estates for terms of years, absolute, or determinable on a life or lives, whereof the said deceased died possessed, and that such personal estate and effects being now fully got in, or the amount thereof clearly ascertained, did not at the time the said probate was [*or* letters of administration were] granted exceed the sum of and are under the

value of pounds, according to the best of the knowledge, information, and belief of this deponent [*or* these deponents]. And that the said deceased did not die possessed of any other personal estate and effects whatever, either in Great Britain or elsewhere, to the best of this deponent's [*or* these deponents'] knowledge and belief (**C**). All which is submitted to the Commissioners of Inland Revenue, praying that the said probate [*or* letters of administration] may now be duly stamped, on payment of the sum of being the sum wanting to make up the duty, which ought to have been at first paid thereon.

The above affidavit to be made by all the executors or administrators.

NOTE.

A If no property over which the deceased had a power of appointment, omit the clause, and insert:

> And that the said deceased had not a general power of appointment over any property.

B If no leasehold, omit the clause, and insert:

> And that the said deceased was not possessed of any leasehold estate for terms of years, absolute, or determinable on a life or lives.

C If the deceased did die possessed of any other property in Great Britain or elsewhere, omit the preceding clause, and insert the following:

> And that the said deceased, at the time of his death, was possessed of personal estate and effects, situate out of the jurisdiction of the aforesaid Court of and not included in the aforesaid sum of the value and particulars of which last-mentioned estate and effects is and are set forth in the schedule hereunto annexed, and subscribed by this deponent [*or* these deponents], and marked No. 2. And that the said deceased did not die possessed of any other personal estate and effects whatever, either in Great Britain or elsewhere, to the best of this deponent's knowledge, information, and belief.

FORM OF ACCOUNT.

Inventory of Deceased's Effects, according to the Value thereof at the time the Probate or Administration was granted.

	£	s.	d.
Cash at the Bankers			
Household goods and furniture, as per valuation			
Plate, linen, and china do.			
Wearing apparel and trinkets do.			
Books and pictures do.			
Wine and other liquors do.			
Stock-in-trade do.			
Leasehold estates do.			
(If sold, state the gross amount of the sale.)			
Book debts			
£1500 New 3½ per Cents. . . . . at .			
£6000 3 per Cent. Consols . . . . . at .			
Reversionary Interest under the Will of or under the Settlement made on the Marriage of			
	£		

When the affidavit is intended to be sworn at the Legacy Duty Office, the following is the form of the jurat:

Sworn at the Legacy Duty Office, Somerset House, in the county of Middlesex, this day of one thousand eight hundred before me

[*Or*]—If more than one deponent, the names of all should be inserted in the jurat as follows, viz.:

Severally sworn by the said at the Legacy Duty Office, Somerset House, in the county of Middlesex, this day of one thousand eight hundred before me

The following are the official

REGULATIONS for obtaining a Return of Duty on Probate of Wills and Letters of Administration, on the ground of Debts paid out of the Effects of the Deceased, pursuant to the Acts of Parliament 55 *Geo.* 3, *c.* 184, *s.* 5, *and* 5 *&* 6 *Vict. c.* 79, *s.* 23.

1. Application must be made, in the first instance, by the executor or administrator, IN PERSON OR BY HIS AGENT, at the Legacy Duty Office, and *within three years after the date of the probate or letters of administration.* But if the executors or administrators shall be prevented from claiming a return of duty within that period, in consequence of the debts not having been ascertained and paid, or the effects of the deceased not having been recovered and made available, an application must be made, in the first instance, to the Commissioners of Inland Revenue to grant further time.

2. It is necessary to produce an affidavit by the executors or administrators, and a correct inventory and account of the effects of the deceased, accompanied by valuations duly stamped, and likewise a schedule of the debts in respect of which the return of duty is claimed, stating in such schedule what each debt is for, according to the forms given on pages and *post.* The probate or letters of administration must also be produced.

3. Evidence must be given of the validity of the debts, and of their being payable by law out of the deceased's PERSONAL estate; and vouchers (on the proper stamps) of the payment thereof must be exhibited. The proper vouchers in respect of debts on mortgage, bond, covenant, bill, or other security, are all the several instruments (duly stamped) relating to such debts, with the proper discharge or release, or other acknowledgment of the payment.

4. The affidavit must be made before a commissioner to administer oaths in the Supreme Court, and upon a two shillings and sixpence stamp; unless the executors or administrators shall attend in person at the Legacy Duty Office, in which case the affidavit may be sworn there, and will not require a stamp, but must be brought ready written.

5. The affidavit is to be written on a sheet of *foolscap* paper

with a *quarter margin*, and on the third side of the sheet an account is to be given of the deceased's effects, and of the *nature* and amount of the debts *actually* paid, in the form and manner set forth on page *post*.

6. If the application shall be made by an *agent* for the executors or administrators, he must write his name and place of residence at the foot of the affidavit.

7. If, when the actual value of the effects of which the deceased died possessed is ascertained, it shall appear that either too much or too little stamp duty has been paid on taking out the same, in consequence of the effects having been estimated by mistake at a greater or less value than they really were, application must be made in the Probate Duty Office, in order to obtain a return of the duty overpaid, or to pay the additional duty, as directed by the 55 Geo. 3, c. 184, ss. 40 and 41, *before* the return of duty on the ground of debts can be granted.

8. A return of duty cannot be granted on account of debts, until all the debts shall be paid in respect of which any claim is intended to be made; nor until the effects of the deceased shall be fully got in and converted into money, or the amount and value thereof shall be otherwise *clearly* ascertained. The return of the stamp duty on probates and letters of administration is restricted to the debts actually contracted, and due and owing by the deceased at the time of his death; and no return can be granted in respect of debts, the payment of which is exclusively charged upon real estate, or in case of a probate or letters of administration dated prior to the 31st August, 1815. When the effects of the deceased shall be situate in different jurisdictions, British or foreign, the dates of the grant of each probate, &c., if more than one, should be set forth in the affidavit, and there should be *separate* schedules of the effects in each jurisdiction, with *one* schedule of the debts.

9. In all cases in which a less sum than the full amount of the debt due shall have been paid, such smaller sum must be inserted in the schedule; that being the sum actually paid; and this latter sum must appear in the body of the affidavit.

10. Upon the claim being established, and all legacy and succession duty then due having been paid, the warrant for the return of probate duty will be delivered.

The following is the form of receipt:

_____ deceased.

Received the day of 18 of the Receiver-General of Inland Revenue, the sum of being the amount mentioned in the annexed order.

_____ Signature_____

_____ Address_____

FORM OF AFFIDAVIT.

To be filled in from the Circular Letter issued by the Legacy Duty Department.	*Register*	*No.*	18	*Folio*	This reference must be written on the back also of the affidavit.

In the executorship [or administration] of deceased.

A. B. of &c. [*or* A. B. of &c. and C. D. of &c.] maketh oath and saith [*or* make oath and say] that probate of the last will and testament [*or* letters of administration of the goods, chattels, and credits, with the will annexed, *if so*] of E. F., late of &c., deceased, who died on the day of one thousand eight hundred and was [*or* were] granted to this deponent [*or* these deponents] by the Court of [*observe here to state the Court correctly*] on the day of one thousand eight hundred and and that the estate and effects of the said deceased, for or in respect of which the said probate was [*or* letters of administration were] granted, were then sworn to be under the value of pounds, and a stamp duty of pounds was accordingly paid on the said probate [*or* letters of administration]. (See note **A** below.) And this deponent further saith [*or* these deponents further say] that the schedule hereunto annexed and subscribed by him [*or* her, *or* them], and marked No. 1, doth contain a true and perfect inventory, account, and valuation of the personal estate and effects whereof the said deceased was possessed, and for which the said probate was [*or* letters of administration were] granted

by the Court aforesaid, exclusive of what the deceased may have been possessed of or entitled to as a trustee for any other person or persons and not beneficially, and particularly (**B**) all the property over which the deceased had a general power of appointment, (**C**) and that the said inventory includes all the leasehold estates for terms of years, absolute, or determinable on a life or lives, whereof the said deceased died possessed, and that such personal estate and effects being now fully got in, or the amount thereof clearly ascertained, did not at the time the said probate was [*or* letters of administration were] granted exceed the sum of according to the best of the knowledge, information, and belief of this deponent [*or* these deponents]. And that the said deceased did not die possessed of any other personal estate and effects whatever, either in Great Britain or elsewhere, to the best of this deponent's [*or* these deponents'] knowledge and belief. (**D**) and (**E**). And this deponent further saith [*or* these deponents further say] that he hath [*or* they have] actually paid debts to the full amount of (being the debts mentioned in the same schedule) without reckoning or including any interest accrued or become due upon any debt since the death of the said deceased; and that the said debts are not in any way made chargeable upon or payable out of any real estate distinct from or in exoneration of the personal estate for and in respect of which the said probate was [*or* letters of administration were] granted, but that the same were justly due and owing from the deceased at the time of his [*or* her] decease, and payable by law out of his [*or* her] personal estate; and that the said debts being deducted from the amount or value of the said personal estate and effects, do reduce the same to a sum, which, if it had been the whole gross amount or value of the personal estate and effects of the deceased, would have occasioned a less stamp duty to be paid on the said (**F**) probate [*or* letters of administration] than was actually paid thereon, by the sum of as this deponent hath [*or* these deponents have] been informed and believes [*or* believe]. All which is submitted to the Commissioners of Inland Revenue, praying that the said sum of may therefore be returned to this deponent [*or* these deponents], pursuant to the Act of Parliament in that behalf, and that the

same may be paid to of the agent for this deponent [*or* these deponents], whose receipt shall be a sufficient discharge for the same.

When the affidavit is intended to be sworn at the Legacy Duty Office, the following is the form of the jurat:

Sworn at the Legacy Duty Office, Somerset House, in the county of Middlesex, this day of one thousand eight hundred and before me

[*Or*]—If more than one deponent, the names of all should be inserted in the jurat as follows, viz.:

Severally sworn by the said at the Legacy Duty Office, Somerset House, in the county of Middlesex, this day of one thousand eight hundred and before me

NOTE.

A If a further duty has been paid by reason of too little duty having been paid by mistake in the first instance, insert the following clause:

And this deponent [*or* these deponents] further saith [*or* say], that since obtaining the said probate [*or* letters of administration] it hath been discovered that the value of the estate and effects of the said deceased exceeds the sum of pounds, and the same has been sworn to be under the value of pounds; that the additional duty of pounds hath been paid on the said probate [*or* letters of administration], which being added to the duty of pounds, paid at the time of obtaining the said probate [*or* letters of administration], makes the whole duty paid pounds.

Or if a proportion of the duty has been returned by reason of too much duty having been paid by mistake in the first instance, then insert the following clauses:

And this deponent [*or* these deponents] further saith [*or* say] that since obtaining the said probate [*or* letters of administration] it having been discovered that the value of the estate and effects of the said deceased is under the sum of pounds, the same hath been sworn to be under that sum, and a return of duty hath been granted on the said probate [*or* letters of administration] whereby the duty paid in the first instance by this deponent [*or* these deponents) is reduced to the sum of pounds.

B If no property over which the deceased had a power of appointment, omit the clause and insert:

And that the said deceased had not a general power of appointment over any property.

C If no leasehold, omit the clause and insert:

And that the said deceased was not possessed of any leasehold estate for terms of years, absolute, or determinable on a life or lives.

D If the deceased did die possessed of any other property in Great Britain or elsewhere, omit the preceding clause and insert the following:

And that the said deceased at the time of his death was possessed of personal estate and effects situate out of the jurisdiction of the aforesaid Court of and not included in the aforesaid sum of the value and particulars of which last-mentioned estate and effects is and are set forth in the schedule hereto annexed and subscribed by this deponent [*or* these deponents], and marked No. 2. And that the said deceased did not die possessed of any other personal estate and effects whatever either in Great Britain or elsewhere, to the best of this deponent's knowledge, information, and belief.

E If the executor or administrator has retained any debt due to himself, then insert the following clauses and omit the words, "And this deponent further saith," and the two lines

following to the words, "since the death of the said deceased," inclusive:

> And this deponent further saith that he is entitled to retain and hath retained the sum of being a debt due and owing to him [*or* her] from the deceased at the time of his [*or* her] death; and that he hath actually paid debts to the full amount of making together the sum of without reckoning or including any interest accrued, or become due upon any debt, since the death of the said deceased.

F If a further duty has been paid, or a proportion of the duty returned, in either case insert here the word "rectified."

If the estate be insolvent, the amount of the funeral and testamentary expenses must be set forth separately, below the schedule of the debts.

SCHEDULE No. 1.

FORM OF ACCOUNT.

SOLVENT ESTATE.

Inventory of Deceased's Effects, according to the value thereof at the time the Probate or Administration was granted.

Cash at the bankers		£875	13 0
Household goods and furniture, as per valuation	If sold, state the gross amount of the sale.	657	10 0
Plate, linen, and china, do.		212	5 6
Wearing apparel and trinkets, do.		58	7 0
Books and pictures, do.		205	9 0
Wine and other liquors, do.		300	0 0
Stock-in-trade, do.		2795	15 0
Leasehold estate, do.		4321	8 0
Book debts		3154	12 6
£1500 New 3½ per Cents., at 105		1575	0 0
£6000 3 per Cent. Consols, at 80		4800	0 0
		£18,955	0 0

Schedule of Debts due and owing from the Deceased at the time of his death, and actually paid.

1. Robert Jennings, wine merchant, for wine	£170	0	0
2. John Radcliffe, upholsterer, for furniture	235	19	0
3. Richard Rolfe, butcher, for meat	43	19	0
4. Charles Lewisham, tailor, for clothes	105	0	0
5. Messrs. Barbour & Co., for Manchester goods	1700	10	0
6. Messrs. Inglis & Co., for calicoes	810	9	0
7. Messrs. Rumbold, for Irish linens	432	10	0
8. John Richards, for fustians	133	15	0
9. Ground-rents of leasehold estates	137	19	6
10. Messrs. Vigurs, note of hand for stationery	278	10	9
		£4048	12 3
Balance		£14,906	7 9

Note.—The Probate Duty on the balance, the same being above £14,000, and under £16,000, is £250, which being deducted from £310 (the duty paid on the gross value), leaves £60 to be returned.

(Signed) A. B.,
Executor or Administrator.

Should the debts be too numerous for one sheet of foolscap, an additional sheet or sheets may be annexed.

FORM OF ACCOUNT.

INSOLVENT ESTATE.

Inventory of Deceased's Effects, according to the value thereof at the time the Probate or Administration was granted.

Cash at the bankers		£875	13 0
Household goods and furniture, as per valuation	If sold, state the gross amount of the sale.	657	10 0
Plate, linen, and china, do.		212	5 0
Wearing apparel and trinkets, do.		58	7 6
Books and pictures, do.		205	9 0
Wine and other liquors, do.		300	0 0
Stock-in-trade, do.		7594	15 0
Leasehold estates, do.		4321	8 0
Book debts		4729	12 6
		£18,955	0 0

Schedule of Debts due and owing from the Deceased at the time of his death, and actually paid.

1. Robert Jennings, wine merchant, for wine	£170	0	0
2. John Radcliffe, upholsterer, for furniture	235	19	0
3. Richard Rolfe, butcher, for meat	43	19	0
4. Charles Lewisham, tailor, for clothes	105	0	0
5. Messrs. Barbour & Co., for Manchester goods	2700	10	0
6. Messrs. Inglis & Co., for calicoes	1810	9	0
7. Messrs. Rumbold, for Irish linens	1432	10	0
8. John Richards, for fustians and other goods	2133	15	0
9. Ground-rents of leasehold estates	137	19	6
10. Messrs. Vigurs, note of hand for stationery	278	2	4
11. Messrs. Cuthbert, for Manchester goods	5545	2	10
12. Thomas Rowlandson, on bond for money lent	4000	0	0
13. James Shrubshole, on bond for money lent	3500	0	0
14. Richard Soly, on bond for money lent	1500	0	0
15. John Purvis, note of hand	1000	0	0
Total debts	£24,593	6	8
But the personal estate sufficient to pay only		£18,445	0 0
The amount of the funeral and testamentary expenses (less the duty to be returned) being		510	0 0

(Signed) A. B.,
Executor or Administrator.

Should the debts be too numerous for one sheet of foolscap, an additional sheet or sheets may be annexed.*

SCHEDULE No. 2.

Personal Estate and Effects (if any) not included in Schedule No. 1.

INDEX.

ADDITIONAL INVENTORY IN SCOTLAND—
necessary when too little duty is paid in first instance, 16.
also whenever further assets are discovered, even though they do not cause a higher duty to become payable on the whole, 16.
in the latter case is exempt from duty, 34.

ADMINISTRATION. *See* REPRESENTATIVE.

ADMINISTRATION DUTY—
included in term probate duty, 1.

ADMINISTRATOR *DE BONIS NON*—
need only include unadministered assets in affidavit of value, 35, note 8.

ADMIRALTY—
Exemption of sums under 100*l.* due from, 33.

AFFIDAVIT OF VALUE—
necessary to obtain probate, 7.
need not be made by person applying for probate himself, 8, note 2.
is free of duty, 8.
must be sent by officer of Probate Courts to Commissioners of Inland Revenue, 8.
what it must include, 9, 19 *seq.*
forms of, 100 *seq.*

ANNUITY—
payable out of real estate not liable to duty, 22.
payable out of personal estate by deceased is a debt in respect of which duty is returnable, 31.

APPOINTMENT—
liability to duty of personalty disposed of by will under absolute power of, 20.

APPORTIONMENT—
of rents of real estate up to death of deceased liable to duty, 19 note 2, 21.

ARMY PRIZE MONEY—
under 100*l.* exempt from duty, 33.

BENEFICIAL INTEREST—
liability to duty of property in which deceased had, 19.

CHATTELS, REAL—
as personalty liable to duty, 22.
as immovable in Scotland not liable to duty, 22.

CIVIL PAY AND PENSIONS—
arrears under 100*l.* exempt from duty, 33.

COMMISSARY COURT—
in Scotland, inventory to be exhibited and recorded in, 4.
of Edinburgh, separate inventory of heritable bonds to be exhibited and recorded in, 9.

COMMISSIONERS OF INLAND REVENUE—
manage probate duty, 1.

CONFIRMATION OF TESTAMENT—
in Scotland to be granted only for effects included in inventory, 71.

CONTINGENT INTERESTS IN PERSONALTY—
liable to duty, 19.

CREDIT—
given for duty in certain cases, 17.

DEBTS—
due to deceased when liable to duty, 26.
due from deceased in first instance, no reduction of duty in respect of, 18.
but in certain cases duty returnable in respect of, 28.

DEVOLUTION—
duty payable in respect of each devolution of beneficial interest, 34, note 8.

DIRECTION TO SELL—
real estate by will or revocable deed does not render it liable to duty, 20.

DOMICILE—
only important when deceased leaves property in more than one of the three kingdoms, 10.

DOUBLE PROBATE—
not liable to duty, 18, note 2.

ESTATES *PUR AUTRE VIE*—
in real estate not liable to duty, 22.
successor in personal estate, 22.

EXCHANGE, BILLS OF—
foreign salable here liable to duty, 23.

EXCHEQUER DIVISION OR COURT—
duty and penalties recoverable in, 5.

EXECUTORS. *See* REPRESENTATIVES.

EXEMPTIONS—
from duty, 32–34.

FOREIGN BILLS—
salable here liable to duty, 23.

FOREIGN BONDS—
passing by delivery here, when liable to duty, 24.

FOREIGN SHIPS—
when liable to duty, 24.

FRIENDLY SOCIETIES—
exemption from duty in certain cases of sums in, 34.

GROSS VALUE—
of estate subject to duty, 18.

GROWING CROPS—
not liable to duty, 21.

HERITABLE BONDS IN SCOTLAND—
liable to duty, 3.
separate inventory may be exhibited of, 3.

INDIAN GOVERNMENT—
promissory notes and stock liable to duty, 24.

INTEREST—
to be included in value of estate up to date of affidavit, 18.

INVENTORY—
to be exhibited and recorded in Scotland, 4.
by person intromitting with estate, 2.
must be upon oath or solemn affirmation, 8.
separate, of heritable bonds, 3.
additional. *See* ADDITIONAL INVENTORY.

INVENTORY DUTY—
is included in term probate duty, 1.
is a debt to the Crown, 2.

IRELAND—
re-sealing English grant in, and *vice versâ*, 11.

LEASEHOLDS—
subject to duty in England, 22.
not in Scotland, 22.

LOCAL SITUATION—
test of liability to duty, 23, note 9.
of company where head office is, 26, note 23; 52.

MISTAKES IN PAYMENT OF DUTY—
how rectified, 13 *seq.*

PARTNERSHIP ASSETS—
liability to duty of share of, 24.
discussed, 49 *seq.*

PENALTY—
In England and Ireland—
on person administering estate for not taking out representation, 100*l.*, and 10 per cent. duty payable, 5.
on officer of Probate Courts exacting probate without first receiving affidavit of value, 50*l.*, 8.

PENALTY—
In England and Ireland—
on officer of Probate Courts not sending affidavit of value to Commissioners of Inland Revenue—
in England, 5*l.* and loss of office, 9.
Ireland, 50*l.* and loss of office, 9.
In Scotland—
on person intromitting with estate, for not exhibiting inventory, 20*l.* and double the amount of duty payable, 6.
on clerk of Commissary Court, for not sending inventory to office of Controller of Legacy and Succession Duties at Edinburgh, 50*l.*, 10.

PERSONAL ESTATE—
situate in the United Kingdom is the subject of the duty, 19 *seq.*

POWER. *See* APPOINTMENT.

PROBATE DUTY. *See* TABLE OF CONTENTS.

PROCEEDS OF SALE. *See* DIRECTION TO SELL.

PURCHASE-MONEY—
of real estate contracted to be sold by owner, liable to duty, 20.
of real estate leased with option of purchase, liable to duty, 20.
discussion as to, 39 *seq.*

RATES OF DUTY. *See* SCHEDULE, p. 35 *seq.*

REAL ESTATE—
not liable to duty, 20.
directed to be sold, not liable to duty, 20.
contracted to be sold, liable to duty, 20.
profits of tolls of lighthouse are, 21.
rent-charge on land is, 22.
rents to be apportioned to date of death, 19, note 2, 21.

REGIMENTAL DEBTS ACT—
surplus property under 100*l.* not liable to duty, 32.

REGISTRARS OF PROBATE COURTS—
to send affidavits of value to Commissioners of Inland Revenue, 8.

RENT-CHARGE. *See* ANNUITY.

RENTS. *See* APPORTIONMENT.

REPRESENTATIVE, LEGAL PERSONAL—
person administering estate must constitute himself, 2.
applying for grant of representation must make affidavit of value, 3.
need not do so personally, 8.
is personally liable for duty, 2.

RETURN OF PROBATE DUTY—
when too much paid, 13.
in respect of debts, 28.

REVERSIONARY INTERESTS—
vested or contingent liable to duty, 19.

SHARES—
New River as real estate not liable to duty, 25.
of companies before 8 & 9 Vict. c. 16, and Companies Act, 1862, when liable to duty, 25.

SHARES—
of companies under Companies Acts liable to duty, 25.
of companies with offices in United Kingdom when liable to duty, 26.
of partnership assets when head office is in United Kingdom liable to duty, 24.
liability to duty discussed, 49.

STAMP ACT—
applies to probate duty, subject to provisions of Probate Duty Acts, 1.

TOLLS OF LIGHTHOUSE—
not liable to duty, 21.

TRUST PROPERTY—
not liable to duty though included in probate, 20.

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